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No. 85-6725

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

WILLIAM J. BOURJAILY,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED APRIL 15, 1986
CERTIORARI GRANTED OCTOBER 14, 1986

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RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO	
Case No. CR 84-105	
June 5, 1984	Indictment Filed.
October 26, 1984	Jury Verdict
December 19, 1984	Order Denying Motion For Judgment Of Acquittal Or For A New Trial
January 4, 1985	Judgment Order Of Commitment
January 4, 1985	Order Granting Leave To Proceed In Forma Pauperis

IN THE UNITED STATES COURT OF APPEALS

Case No. 85-3058	
January 11, 1985	Notice Of Appeal To Sixth Circuit
January 15, 1986	Judgment Of Court Of Appeals Affirming Conviction

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CR 84-105

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ANGELO J. LONARDO
and

WILLIAM BOURJAILY, DEFENDANTS

Title 21, Section 841(a)(1)
Title 21, Section 843(b)
Title 21, Section 846
United States Code

INDICTMENT

COUNT I

The Grand Jury charges:

From at least May 12, 1984, and continuing up to and including May 25, 1984, the exact dates to the Grand Jury unknown, in the Northern District of Ohio, Eastern Division, and elsewhere, ANGELO J. LONARDO, and WILLIAM BOURJAILY, the defendants herein, did unlawfully, willfully, intentionally, and knowingly combine, conspire, confederate, and agree together and with each other and agree with diverse others to the Grand Jury known and unknown, to distribute cocaine, and to possess cocaine with the intent to distribute said substance, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

OVERT ACTS

In furtherance of the conspiracy and to effect the objectives thereof, the defendants performed the following overt acts:

1. On or about May 12, 1984, ANGELO J. LONARDO met with Clarence Greathouse at Denny's Restaurant, Parma, Ohio and discussed the purchase of a kilogram of cocaine.
2. On or about May 17, 1984, ANGELO J. LONARDO had a telephone conversation from Cleveland's P.M. Restaurant, Valley View, Ohio with Clarence Greathouse regarding a partial downpayment for the purchase of a kilogram of cocaine.
3. On or about May 19, 1984, ANGELO J. LONARDO met with Clarence Greathouse at Cleveland's P.M. Restaurant, Valley View, Ohio, and paid Clarence Greathouse \$1,000 as a partial downpayment for the purchase of a kilogram of cocaine.
4. On or about May 21, 1984, ANGELO J. LONARDO had a telephone conversation with Clarence Greathouse at the Marriott Inn, Cleveland, Ohio regarding the delivery of a kilogram of cocaine.
5. On or about May 24, 1984, ANGELO J. LONARDO met with Clarence Greathouse at the Sheraton Hopkins Airport Hotel, Cleveland, Ohio, and discussed the purchase of a kilogram of cocaine.
6. On or about May 25, 1984, ANGELO J. LONARDO had a telephone conversation with Clarence Greathouse at the Sheraton Hopkins Airport Hotel, Cleveland, Ohio and discussed the payment and delivery of a kilogram of cocaine.
7. On or about May 25, 1984, ANGELO J. LONARDO and WILLIAM BOURJAILY met Clarence Greathouse at the Hilton Inn, Independence, Ohio and took delivery of a kilogram of cocaine.

All in violation of Title 21, United States Code, Section 846.

COUNT II

The Grand Jury further charges:

On or about May 25, 1984, in the Northern District of Ohio, Eastern Division, ANGELO J. LONARDO and WILLIAM BOURJAILY did knowingly and intentionally possess with intent to distribute approximately one kilogram of cocaine, a Schedule II narcotic drug controlled substance; in violation of Title 21, Section 841(a)(1), United States Code, and Title 18, United States Code, section 2.

COUNT III

The Grand Jury further charges:

On or about May 17, 1984, in the Northern District of Ohio, Eastern Division, ANGELO J. LONARDO did knowingly and intentionally use a communication facility, to wit: a telephone to facilitate acts constituting a felony under Section 846 and 841(a)(1) of Title 21, United States Code; in violation of Title 21, Section 843(b), United States Code.

COUNT IV

The Grand Jury further charges:

On or about May 25, 1984, in the Northern District of Ohio, Eastern Division, ANGELO J. LONARDO did knowingly and intentionally use a communication facility, to wit: a telephone to facilitate acts constituting a felony under Section 846 and 841(a)(1) of Title 21, United States Code; in violation of Title 21, Section 843(b), United States Code.

A TRUE BILL

Foreman

PATRICK M. McLAUGHLIN
Acting United States Attorney

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

(Title Omitted in Printing)

**SELECTED SEGMENTS OF
TRANSCRIPT OF PROCEEDINGS**

**DIRECT EXAMINATION OF
CLARENCE GREATHOUSE**

* * * *

[5] Q. When did you first meet Angelo J. Lonardo?
A. The latter part of '80, 1980 or the early part of '81.

Q. This person that you met, Angelo J. Lonardo, do you see him in the courtroom today?

A. Yes. He's sitting across the room from me in a greyish-like jacket with a striped tie (indicating).

MR. BAKEMAN: Your Honor, may the record reflect the witness has identified the defendant Angelo J. Lonardo?

THE COURT: It may.

BY MR. BAKEMAN:

Q. Where did this meeting take place?
A. Howard Johnson's at 55th and Marginal.
Q. Okay. Clarence, could you put your hand down, please?
A. Oh, okay.
Q. When did you first meet Special Agent Hardrick Crawford of the FBI?
A. About the middle of 1982.

Q. And could you describe for the jury your relationship with Hardrick Crawford?

A. Yes. I worked with him for quite awhile. We worked in narcotics, well, you might say busting people, [6] setting up narcotics dealers.

Q. While you were engaged, would it be a fair phrase to say that you were an informant?

A. Yes, I was an informant.

Q. While you were an informant with the FBI, were you still engaged in the sale of illegal drugs?

A. Yes, I was.

Q. Was the FBI aware of your activities?

A. No, they were not.

MR. WILLIS: Objection.

THE COURT: Sustained.

MR. WILLIS: I move that answer be stricken.

THE COURT: The answer may be stricken and the question.

BY MR. BAKEMAN:

Q. Did you ever inform the FBI of your activities in the illegal sale of drugs?

A. No, I did not.

Q. As a result of your cooperation with Crawford and other FBI agents, did you ever receive any benefits?

A. I received \$2800 throughout the period of my involvement with them, 2500 for Rico Petroncio, for odds and ends that I had incurred, expenses.

Q. And the \$300?

[7] A. \$300 for another—

Q. Was that for a fugitive?

A. A fugitive.

Q. Okay. In March of 1983, were you arrested by State authorities on an indictment for drug trafficking?

A. Yes, I was.

Q. What happened to that charge?

A. The case was dismissed because of lack of evidence. The witness didn't appear. That's what my attorney told me.

MR. WILLIS: Objection. Move that answer be stricken and the jury instructed.

THE COURT: Sustained. Sustained as to what his attorney told him.

* * * *

[8] A. You mean did they confiscate anything?

Q. Right.

A. Yes. They took four kilos of cocaine, 81,000 in cash, gold, jewelry, coin collections, took everything I had.

Q. As a result of that seizure on December 10th, did you ever subsequently plead guilty to charges relating to the December 7th or—excuse me—December 10th search?

A. I don't understand.

Q. I'll withdraw the question.

In May of 1984, did you reach an agreement with the Federal Government?

A. Yes, I did.

Q. Would you please outline for the jury the agreement that you reached?

MR. WILLIS: Objection.

THE COURT: Overruled.

A. I went to the Federal Government with a—to talk to them about maybe working with them steady, about getting my sentence reduced, and I pleaded guilty to a continuous criminal enterprise which carries a sentence of ten years, to the best of my knowledge, and—

Q. Ten years to what?

A. Ten years to life.

* * * *

[21] DIRECT EXAMINATION OF
CLARENCE GREATHOUSE (Resumed)

(Tape resumed.)

BY MR. BAKEMAN:

Q. Earlier in the transcript, Mr. Greathouse, you heard Mr. Lonardo say "The way we'll do it is the way we did with the one fellow," and you said "Okay."

MR. DEVAN: Objection.

THE COURT: Let me hear the question.

BY MR. BAKEMAN:

Q. And then you responded "Okay."

Do you recall that dialogue?

A. Yes, I do.

Q. When you responded "Okay—"

MR. DEVAN: I'll object again to this entire line of questioning, your Honor.

THE COURT: Let's approach the side bar.

(Thereupon, the following proceedings were had at the side bar out of the hearing of the jury:)

MR. DEVAN: Your Honor, the purpose of my [22] objection is the same reason as before. We are talking about apparently this conversation with Miller and previous deals, and I don't believe this is in furtherance of the conspiracy.

Plus it is an uncharged act and to reemphasize this by asking him specific questions truly goes beyond the use of this tape for whatever purpose the Government has offered it.

And I don't feel it's beneficial or probative of the issue here, whether or not my client conspired in this case.

THE COURT: Yes, Mr. Willis.

MR. WILLIS: Yes. I don't see how it's even possible that these conversations could ever be a part of a conspiracy yet to be formed, assuming one was eventually formed, in which Mr. Bourjaily and Lonardo were members.

And he's being grievously harmed by this type of testimony which shows, if it does, some relationships

between Mr. Lonardo and Mr. Greathouse in which he is not privy to, should not be affected by in any way.

So I feel, your Honor, that we ought to be severed out of this case at this point because it can only get worse given the fact that the indictment charges a conspiracy in which Mr. Bourjaily could have only possibly [23] entered on the day that the alleged sale took place.

MR. BAKEMAN: Your Honor, responding first to Mr. Willis's argument, even assuming the posture that Mr. Willis takes here in that he entered the conspiracy on the 25th, that is still sufficient evidence to constitute participation in the conspiracy as charged.

Your Honor, the Government has stayed away from the conversation regarding Anselmo and the money owed and the debt ostensibly because the only conversation that the Government has called Mr. Greathouse's attention to is the conversation where Mr. Lonardo himself said "We will do it the way we did it before."

And that conversation I believe is material based on the opening statement that Mr. DeVan said where Mr. Lonardo's intent at these meetings becomes in issue.

Further, again like I said before it was voluntarily stated by Mr. Lonardo and no proferring or insistence by Clarence Greathouse.

MR. McHARGH: Your Honor, further, the statement is obvious in its indication as to how they were going to proceed with this present deal, and Lonardo's instructing as to how the proceeding is going to go forward so that it is in furtherance of the conspiracy charged in the indictment.

* * * *

[24] MR. WILLIS: I might add, your Honor, that the conspiracy that Mr. Greathouse is talking about supposedly with Mr. Lonardo is a conspiracy between those two parties, and insofar as Mr. Bourjaily is concerned this reference is to some past conspiracy.

And even if it would be otherwise admissible for the purpose suggested by counsel, I think under Rule 403, the probative value insofar as the charges against Mr. Bourjaily is surely outweighed by the prejudicial impact of that evidence.

THE COURT: Motion is overruled.

(End of bench conference.)

BY MR. BAKEMAN:

Q. Mr. Greathouse, do you recall a conversation in this transcript where Mr. Lonardo said "And the way we'll do it is the way we did it with the one fellow," and you [25] responded "Okay"?

A. Yes, I do.

Q. When you responded "okay," did you know what Mr. Lonardo was talking about?

A. Yes, I did know.

Q. Would you please briefly describe for the jury how that deal went down?

MR. WILLIS: Objection.

MR. DeVAN: Objection.

THE COURT: Overruled.

MR. BAKEMAN: I'll withdraw that question for a moment.

BY MR. BAKEMAN:

Q. Why did Lonardo tell you "We'll do it the way we did it with the one fellow"?

MR. WILLIS: Objection.

MR. DeVAN: Objection.

THE COURT: Sustained.

BY MR. BAKEMAN:

Q. How do you understand that that deal took place?

A. Mr. Lonardo and I at one time before that had delivered a kilo of cocaine to an office building in Rocky River somewhere. I don't know the exact address.

At that time he and I and another associate of his, we delivered it to an office in that building. We went in [26] and sat down, and his other associate then picked up the kilo of cocaine and delivered it across the hall to another office to be tested and okayed for purchase.

* * * *

(Thereupon, the following proceedings were had at the side bar out of the hearing of the jury:)

MR. DeVAN: [Counsel for Co-defendant, Lonardo] Your Honor, the reason for my objection is it's quite clear now that this man is unable to pinpoint the time which makes it relevant to the conspiracy charged in the present case.

And conceivably this particular delivery, the Rocky River delivery, could have occurred 10 or 20 years ago [27] conceivably, and certainly is not during the continuing course of conduct which would have lead up to this particular conspiracy.

Likewise conspiracies can be separate crimes at separate times. And if there was a separate conspiracy a long time ago that has no bearing upon this conspiracy, it should not be admitted.

At the very least he has failed to be specific as to the time of this particular crime and put us in a position where it's virtually impossible to defend against it. And I move that at this time the Court declare a mistrial and strike the jury panel and that we start over again.

MR. BAKEMAN: Your Honor, not to be repetitive, but the question is being asked as part of this conspiracy because it's relevant to the mode of delivery which is part of this conspiracy.

I will clear it up as far as within the parameters that he can as to when this indictment occurred.

THE COURT: It's overruled.

(End of bench conference.)

BY MR. BAKEMAN:

Q. Regarding the Rocky River incident, can you tell us whether or not that occurred within the last year, last two years?

[28] A. It was pretty much within the last year, I'm quite sure.

Q. Also previously in the transcript there is a conversation where you and Lonardo are using figures like 13 "O", 58.

Can you explain to the jury what is meant by the figure 58?

A. 58 represents in street language and our language \$58,000.

* * * *

Q. Now, what was your understanding of what you were to do as far as your role in providing the cocaine?

A. I was to go and purchase the cocaine and call some shippers that I knew and have them deliver the cocaine to the City of Cleveland.

In return I was to purchase the cocaine here and ship to Mr. Lonardo's and my buyers.

[29] Q. Now, what was the cost of cocaine that you were paying for for one kilogram?

A. 21,000 to 25,000.

Q. Did you and Lonardo agree as to a price that you were going to sell it to other persons?

A. Yes, we did.

Q. What was the price?

A. 31,000.

Q. Now, what was your understanding as to the role that Lonardo was to play in the delivery of cocaine?

MR. DEVAN. Objection.

A. Mr. Lonardo was to line up his buyers.

MR. DEVAN: Objection.

THE COURT: Just a minute, please.

* * * *

[30] MR. WILLIS: My concern is somewhat different. It appears that this Miller testimony was admitted, if

I understood counsel, for some limited purpose of showing that there would be a similarity as between the delivery in the other case, the Miller situation, and the delivery of cocaine in this instance.

If that's the limited purpose, then it's obviously not substantive proof of any of these charges, and the jury ought to be so instructed.

On the other hand, I have very real grave concerns [31] now given the thrust of this evidence, it appears that that was a conspiracy between Mr. Lonardo and Mr. Greathouse, and we all know that one act does not make—an act involving a seller and purchaser does not make the seller and purchaser conspirators.

So it seems if that's the thrust of the evidence as it's coming across now, there can never be a conspiracy between Mr. Lonardo if he is passing himself off as a seller, assuming Mr. Bourjaily is a purchaser. There is no conspiracy between purchaser and seller.

And I think the evidence is clear—I mean the law is clear on that point.

So again, your Honor, I'm alerting the Court that we have been grievously harmed by this evidence that's coming in in this very convoluted fashion and it cannot be corrected by any instructions that could possibly be conceived by the Court, even with the assistance of counsel obviously.

* * * *

[33] BY MR. BAKEMAN:

Q. Mr. Greathouse, referring to the May 12th meeting at Denny's Restaurants, what was your understanding as to what Lonardo was supposed to do?

A. Mr. Lonardo was supposed to go out and call his people. What I mean by his people is his buyers of cocaine, people that I had never had the chance or opportunity to meet.

He was supposed to line them up for the cocaine that I had on order to be received.

MR. BAKEMAN: If you would put the headsets back on, please.

(Pause.)

(Tape resumed.)

* * * *

[75] BY MR. BAKEMAN:

Q. Earlier in the transcript you said "I'm on a clear phone."

Will you describe to the jury what you meant by a clear phone?

A. Yes. I meant I was on a pay phone in the lobby somewhere, possibly, and we knew that—

MR. WILLIS: Objection.

THE COURT: Sustained as to "We knew."

BY MR. BAKEMAN:

Q. What do you know, did you know?

A. Okay. I knew, I knew that pay phones were not tapped. We need them for caution of safety, I did.

Q. Would you say the use of a telephone by persons familiar with the illegal trafficking in drugs—

MR. WILLIS: Objection.

MR. DEVAN: Objection, your Honor.

THE COURT: Let me hear the question. Let me hear the question.

BY MR. BAKEMAN:

Q. Mr. Greathouse, would you say it was a common practice by persons who are trafficking in illegal drugs to use pay phones or other sorts of public telephones?

MR. DEVAN: Objection.

THE COURT: He may answer. Overruled.

[76] A. Yes, it's definitely common practice. You never use your home phone.

Q. Did Lonardo come to meet you on the evening of May 24, 1984?

A. Yes.

Q. And where did he meet you?

A. We met in the lounge of the Sheraton.

Q. And the Sheraton at what location?

A. Airport Sheraton.

Q. Do you recall approximately what time it was that he got there?

A. 9:30, 10:00 o'clock, something like that.

Q. Where did you meet Lonardo?

A. I met him in the lobby and we went to the lounge.

Q. How long did you stay in the lounge?

A. Approximately 20, 30 minutes.

Q. Was there any conversation between yourself and Lonardo in the lounge regarding trafficking in cocaine?

A. Yes.

Q. Were you wearing a body recorder of any type at that time?

A. No.

Q. What did you do while in the lounge?

A. Well, we sit there, we talked about the cocaine, and I told him that I had received—

* * * *

[80] BY MR. BAKEMAN:

Q. What did you say in the note?

A. I put in the note that a quarter kilo of cocaine was 12,500 per quarter kilo.

Q. By the way, on a prior date had you and Mr. Lonardo agreed as to the price of a kilogram of cocaine?

A. Yes, we had.

Q. What was that price to be?

A. 31,000 a kilo.

Q. Did you have any conversation with Lonardo on the 24th about the receipt of that note?

A. Yes, I did.

Q. What was the nature of that conversation to the best of your recollection?

A. The conversation—

MR. WILLIS: Objection, your Honor. May we approach the bench?

THE COURT: Overruled. Overruled.

A. The conversation was that when he read the note, he misunderstood the note.

MR. WILLIS: Objection.

THE COURT: I'll overrule it. He's telling what the conversation is.

MR. WILLIS: He's saying somebody misunderstood something, your Honor.

[81] THE COURT: I assume he's talking about Mr. Lonardo.

THE WITNESS: Yes. Mr. Lonardo.

Rephrase that.

BY MR. BAKEMAN:

Q. Did you have a conversation with Lonardo about the receipt of that note the evening of May 24th?

A. Yes. Yes. He, Mr. Lonardo, told me that he misunderstood the note. There's four quarter kilos in a kilo of cocaine.

Now, the way that I had specified it in the note that I wanted 12,500 per quarter kilo, the way Mr. Lonardo explained it to me was he understood the note to say that I wanted 50,000 a kilo, four times 12,500 and I had already quoted him 31,000.

So he misunderstood and he told his people that I was supposedly, that I was asking 50,000 instead of 31,000 so he had to come and talk to me about the price.

Q. Now, this meeting that took place on the 24th, have you had an opportunity to review the video tape and the transcript?

A. Yes, I have.

* * * *

[85] Q. This first phone conversation on the 25th, that was taped, is that not correct?

A. Yes, it was.

Q. Did any party give consent to the taping of the phone conversation?

A. I did.

Q. Do you recall that conversation?

A. I think I asked him if he wanted to get together for a cup of coffee.

Q. Did Lonardo say whether or not he had anybody present with him?

MR. WILLIS: Your Honor, may we approach the bench?

(Side bar conference had off the record.)

BY MR. BAKEMAN:

Q. Do you recall whether or not Mr. Lonardo indicated whether or not anybody was with him?

A. Yes. He said he had a friend with him.

Q. What occurred next in that phone conversation if you recall?

A. Mr. Lonardo and I, we talked for a few minutes and I asked him who was going to stand good for the [86] merchandise.

Q. Okay. Showing you what's been marked for identification purposes as Government's Exhibits 12-A and 12-B, can you identify them?

A. Yes. These are the tapes of the conversation.

Q. That was a phone conversation; is that correct?

A. Yes.

Q. And 12-B is what?

A. Is the transcript of the conversation.

Q. Have you had an opportunity to review the tape and transcript?

A. Yes, I have.

Q. Are the tapes and transcripts fair and accurate to the best of your recollection?

A. Yes, they are.

(Pause.)

MR. BAKEMAN: Your Honor, for the record we will be playing Side A of Government's Exhibit 12-A.

(Tape played.)

BY MR. BAKEMAN:

Q. After you hung up the phone with this phone conversation with Lonardo on May 25th, what next did you do?

A. At that time we didn't have a chance to hook up a recorder, and I went down.

[87] MR. WILLIS: Objection.

THE COURT: Overruled.

BY MR. BAKEMAN:

Q. Just what did you do?

A. I hung up the phone and went to the lobby to call him.

Q. Was this second phone call recorded?

A. No, it wasn't.

Q. Now, earlier the phone call that was recorded, Lonardo talked about trees again. Do you recall him saying "trees"?

A. Yes.

Q. Did you know what Lonardo was talking about when he said "trees"?

A. Yes, I did.

Q. And what was that?

A. He was talking about cocaine. You never use "cocaine" on the telephone.

Q. Now, when you went down to the lobby, did you again engage in a phone conversation with Lonardo?

A. Yes, I did.

Q. Can you tell the jury to the best of your recollection what Lonardo said and what your response was to his questions?

A. Mr. Lonardo and I was talking—I was talking to [88] him about who was going to stand good for the cocaine, how was it going to be paid for.

And then at that time he says "I have a friend with me. Would you care to talk to him?" I said "Yes," so I talked to the unknown man. I have no knowledge who he was.

Q. Okay. Do you recall the conversation that you had with this second individual?

A. Yes.

MR. WILLIS: Objection.

THE COURT: Let's approach the side bar, please.

(Thereupon, the following proceedings were had at the side bar out of the hearing of the jury:)

THE COURT: Yes, Mr. Willis.

MR. WILLIS: Yes. It appears now that we are going to be limited in our ability to deal with this response by Mr. Greathouse's imagination. For reasons known only to Mr. Greathouse he declined to have this phone conversation recorded because if he was going to make a call to Mr. Lonardo there is no way in the world Lonardo could possibly know that he was not calling from the very same phone he had previously called from.

And so this trip to the lobby insofar as I'm concerned portrays Mr. Greathouse as being a—as being [89] one who can certainly be creative in his thinking, and I think is highly prejudicial to Mr. Bourjaily because again he has no check on what he is saying and is going to say.

I think we ought to voir dire this examination outside the presence of the jury and have the Court deal with it on that basis because his motivations for going to another phone require an explanation.

* * * *

[93] THE COURT: You may keep your seats while you talk if you want to.

Yes, Mr. Willis.

MR. WILLIS: If it's all right with the Court, I'd like to use the podium.

First of all, your Honor, you have to accept as being probative, because the Court admitted it, 11-B and all of its contents.

The segment that I read reads, at least on page four, what I gather from it is that Mr. Lonardo supposedly has to recontact some people. Quoting the statement, "See, I got to recontact these people."

So that tells me and the jury, and I think I'm reasonable in my assessment, that the upshot of what the previous conversation or the conversation that took place on May 24th was that Mr. Lonardo was supposed to contact some people, not one person, but some people.

Now, we have a situation where Mr. Greathouse calls from the hotel at 5:36 or whatever time it is, and he talks to Mr. Lonardo according to the transcript and he says "I've got a gentleman friend of mine right here now."

And then they say that the suggestion is made that he should use another telephone. And that suggestion, of course, is made by Mr. Greathouse who said "No, I'm not on [94] a pay phone. You want me to go to a pay phone and call you?" And the answer was "Absolutely."

Now, we don't have any reason to believe that he could not have simply redialed from the hotel, right where he was and said "I'm on the pay phone." How can a person who is at the other end of the phone, the other conversant, know whether you are calling him from a pay phone or from a phone in the hotel room?

So he has to have had ulterior motives for making a phone call that he knew would not be monitored by his partners, the FBI.

So that I have real concerns about the admissibility of this evidence. Number one, we don't know who he is talking to. That's by his own admission, "I don't know who I am talking to."

We know from the history of this conversation that Mr. Lonardo supposedly is going to recontact some people. We know from the recorded portion of the previous con-

versation on the same day Mr. Lonardo is quoted as having said "As a matter of fact, I have a gentleman friend of mine here now."

So that the impossible impact of this testimony if allowed by Mr. Greathouse, who has been preempted by his imagination as to what he will say, the jury will infer and the Government will try to assist them in inferring [95] that the person being talked to by Mr. Greathouse is Mr. Bourjaily.

And I think that's an unfair inference. I think that the prejudicial impact of that testimony will be absolutely devastating insofar as Mr. Bourjaily is concerned. Number one, he doesn't know who he is talking to. Number two, this is a statement he elected not to have recorded. And number three, the jury can infer, improperly so, that the other conversant was Mr. Bourjaily.

To the extent the Court deems it admissible, and I don't know what theory under Rule 801 that this evidence could possibly be admissible assuming that the statement is made by some other party, certainly I don't know what theory that it's being admitted under. I think they ought to be required to cite a rule as the basis for the admission of his testimony because the admission of all evidence in criminal trials in America, in Federal Courts, the basis for it has to be in those rules.

So that assuming that they can divine some rule, and I don't think they can, we would request under Rule 403 that it ought to be excluded because the prejudicial impact severely outweighs its probative value.

And we also have to understand that the Court has in abeyance the request that we made under Rule 104—no, [96] the Court has abeyance based on its—the Vinson and Enright decisions and the question is whether or not the conspiracy exists. So that we have some serious problems as to whether or not this evidence, assuming the Court lets it in, can be properly used by the Court in deciding the question under Rule 104 as to whether or not a conspiracy exists.

And I'm troubled by it, your Honor, and I think it's very unfair to the defendant and I move that the testimony ought to be excluded in the trial insofar as Mr. Bourjaily is concerned.

THE COURT: Mr. DeVan.

MR. DEVAN: Your Honor, I'll merely join in comments of Mr. Willis. It's really his motion.

I have a deep concern over certain statements by this unidentified male. They may come within nonconspiratorial hearsay declarations, and I think that a voir dire of this witness would be the proper way to determine whether or not this evidence should go in front of the jury.

MR. WILLIS: Your Honor, the rule I referred to is 801(d)(2)—whatever—that statements in furtherance of a conspiracy, 801(d)(2)(A), I think that's the rule, and that's the only rule in which they can get it in against Mr. Bourjaily. And but then it has to be a [97] statement in furtherance of a conspiracy of which he was a member.

That is the rule to which I have reference and I don't think they can torture this testimony in to fit within the ambit of that rule. And for that reason I feel it's inadmissible against Mr. Bourjaily.

THE COURT: Mr. Bakeman.

MR. BAKEMAN: Since my esteemed colleague decided to use the podium, to try to follow in his footsteps I'll do the same thing.

First of all, Your Honor, going back approximately two months ago the Government, pursuant to this Court's order, turned over to defense counsel a 302. The 302 was—the date of transcription was 5/30/84, and it dealt with this particular telephone call.

Mr. Willis's first complaint is that it goes to the reliability of this phone call as to why Greathouse could not have manipulated this conversation because the FBI was not in a position to monitor that. If he read the 302 very carefully, and I'm sure he did, he would have

realized that there was an FBI agent adjacent with him at the phone booth listening to everything Clarence Greathouse said. The FBI agent's name is Special Agent Richard Dorton.

So as far as the conversation that Greathouse had, [98] that was monitored to the best of the FBI's ability by having an agent present at all times with Clarence Greathouse.

If Clarence Greathouse is asked the question "Why didn't you dial back; how would Lonardo know that you were not at a pay phone," Greathouse would answer that question that pay phones in this area, the fourth number in a pay phone is the number 9. And so if he gave a 363-3980 number, Lonardo would know that was not a pay phone. But if he gave a 3639, dah, dah, dah, then Lonardo would know that that was a pay phone.

Now, whether or not that is a fact verified by the telephone company, that is a fact that the people involved in drug dealing were familiar with. And that's why he could not stay at that phone. He had to go down to a public phone in case Lonardo said "What phone number are you at; give it to me because I'll dial it, you hang up and I'll dial you back."

So I think that that is the reason why the scenario of events had to occur the way they did because of Lonardo's insistence.

THE COURT: I think I have already said at the side bar, you asked the question, there was an objection, I overruled the objection and you didn't proceed any further.

* * * *

[103] BY MR. BAKEMAN:

Q. Okay. Now, when you were talking on the phone this second time from the lobby, the first time in the lobby, who were you talking with the first time?

A. Angelo Lonardo.

Q. Okay. Do you recall the initial conversation between yourself and Lonardo?

A. Well, we—we started the conversation, we were discussing any—how the product was going to be paid for. That was our initial talk.

Q. Did you subsequently then talk to another individual on the phone?

A. Yes, I did.

Q. Did that person identify himself as to who he was?

A. No, he did not.

[104] Q. Did you know who that person was?

A. No, I did not.

Q. What did that person say to you as best you recall?

MR. WILLIS: Objection, your Honor.

THE COURT: Overruled.

A. That person told me that I also—we talked about who was going to pay, and he said—

Q. Did you say he asked you who was going to pay?

A. No. I asked—

MR. DeVAN: I'll object, your Honor. May I have a continuing objection to this?

THE COURT: Yes, sir, you may.

BY MR. BAKEMAN:

Q. Proceed, Mr. Greathouse.

A. Well, let's start again.

Q. What did he say, the second individual?

A. The second individual, I asked him how it was going to be paid for. He told me that he would pay 15,000 up front.

Well, I asked him if Mr. Lonardo was going to stand good for this order and he said no. He said he was going to pay 15,000 up front upon delivery of the cocaine and then upon acceptance after it was tested then I was supposed to be paid the balance.

Q. Was there any other conversation regarding the [105] cocaine or the Christmas trees?

A. Yes. The quality, the purity, the amount of rock formation in the cocaine because it comes in rock formation and a powder formation.

Q. Well, specifically do you recall what the second individual asked you about the quality of the cocaine?

A. Yes, I do.

He asked me what was the hard content and I told him approximately 90 percent.

Q. What do you mean by hard content?

A. That is the rock form of the cocaine. When cocaine comes in a rock form most normally it's of the highest of quality unless it's a rerun form.

And then he asked me about the clarity of the cocaine.

Q. And what was your response?

A. It was mother's pearl. Cocaine comes in the form of mother's pearl, mother of pearl and various other forms but mother of pearl is one of the higher qualities of cocaine.

And he asked me the clarity of the cocaine and I told him it was running roughly—I told him the clarity of the stones, of the diamonds are approximately 98 percent which would have been the purity of the cocaine.

Q. Well, how does cocaine normally come and by reference to purity?

[106] A. It could come anywhere from 10 percent to 98 percent.

* * * *

[109] Q. Now, after you had this conversation with the friend of Lonardo's on the telephone regarding the rock content, the clarity of the cocaine, did there come a time [110] when you talked again with Lonardo on that same phone call?

A. Yes.

Q. Okay. What was the nature of that conversation?

A. We—I talked to him about a delivery date.

Q. What did Lonardo say about the delivery date of the cocaine?

A. Mr. Lonardo said he would call me back.

- Q. Was that the end of that phone conversation?
 A. Yes, it was pretty much the end.
 Q. Is that basically what you recall the phone conversation to be on May 25, 1984?
 A. Yes, sir.
 Q. Did you have a third phone conversation with Lonardo on May 25th?
 A. Yes, I did.
 Q. And to the best of your knowledge, how did that phone call originate; did he call you or did you call him?
 A. He called me on the page unit.
 Q. And after you received the call on your page unit, what if anything did you do?
 A. I went immediately—well, first I rigged the Nagra, the tape recorder on my body. Then I went to the lobby to a pay phone to make the phone call.
 Q. Who was present when you made this third phone [111] call?
 A. Mr. Dick Dorton.
 Q. And I take it the phone conversation was recorded?
 A. Yes, it was.
 Q. Did the FBI obtain consent for the recording of that telephone conversation?
 A. Yes, they did.
 Q. And from whom did they obtain that consent?
 A. Myself.
 (Pause.)
 Q. Mr. Greathouse, showing you what's been marked for identification purposes as Government's Exhibits 13-A and 13-B.
 A. 13-A.
 Q. Can you identify 13-A, please?
 A. 13-A is a tape recording of my conversation.
 Q. And 13-B?
 A. It's a transcript of my conversation.
 Q. Have you had the opportunity to review the tape and transcript?
 A. Yes, I have.

- Q. And are the tapes and transcripts accurate as to the best of your recollection of the conversation on the 25th?
 A. Yes, they are.
 [112] Q. Now, you indicated that this phone conversation was recorded; is that correct?
 A. Yes, it was.
 Q. And it was with a body recorder?
 A. Yes, it was.
 Q. How were all the other phone conversations monitored?
 A. They were—well, we had a recorder like sitting here and it had a suction cup that stuck right on top of the telephone from a regular phone.
 Q. And that recorder was up in the motel room; is that correct?
 A. Right.
 Q. So the recording of this phone call, was that first time the Government used this particular procedure to the best of your knowledge?
 A. No, it definitely was not.
 Q. No. With the body recorder?
 A. Oh, with this procedure, yes, the procedure to record it.
 MR. BAKEMAN: Do you want to put your headsets on, please?
 For the record, your Honor, this is Government's Exhibit 13-A and we are playing Side A.
 THE COURT: Very good.
 [113] (Tape played.)
- BY MR. BAKEMAN:
- Q. After you received these instructions from the defendant Lonardo, what next did you do?
 A. Well, at that time I prepared to make the delivery.
 Q. And where was the delivery to take place?
 A. At the Hilton Hotel, behind the Hilton Hotel in the parking lot by Rockside and 77.

Q. Prior to leaving for the Hilton Hotel on Rockside, did you receive anything from the FBI?

A. Yes, I did.

Q. What was that?

A. One kilo of cocaine.

Q. How was the kilogram of cocaine packaged?

A. It was in a plastic package similar to this and placed into a yellow bag.

Q. Would you recognize the yellow bag and the cocaine if you saw it again?

A. Yes, I would.

Q. Mr. Greathouse, showing you what's been marked for identification purposes as Government's Exhibit 14-A, can you identify that, please?

A. Yes. This is the yellow bag that we used. It's a Sheraton clothes bag.

Q. And what was contained inside that bag?

[114] A. A kilo of cocaine.

MR. BAKEMAN: Just a second, your Honor.

(Pause.)

Q. Sir, showing you what's been marked for identification purposes as Government's Exhibit 14-B, can you identify this?

A. Yes, it's cocaine.

Q. Okay. And was that the cocaine contained in the yellow Sheraton bag?

A. I can't say it is because it's packaged wrong.

Q. How was it packaged when you originally put it in the yellow bag?

A. In one large package of roughly 1,000 grams of cocaine. It wasn't broken down that way. That was—

Q. Would it refresh your recollection if it was in four quarter kis?

A. Yes, it was.

Q. And from whom did you obtain Government's Exhibit 14-B?

A. The Federal Government.

Q. Where did you place Government's Exhibits 14-A and 14-B in your car?

A. Under the passenger side of the automobile, passenger seat.

* * * *

[116] Sheraton to the Rockside.

Q. And what happened as you arrived at Rockside and the Hilton Hotel?

A. I arrived at the bottom of the hill just before you go up to the hotel, and Mr. Dorton got out of my car I think at the Bob Evans right at the bottom of the hill, he got out of my car there and then he and Mr. Connole followed me from the restaurant up the hill into the parking lot until I parked my car and watched me.

Q. Are you familiar with the Hilton Hotel there off of Rockside and 77?

A. Yes, I am.

* * * *

[118] Q. Can you use the photograph to indicate to the jury how you went into the Hilton Hotel?

A. Yes. Got out of the car here and this is a walk-way going into the side door of the hotel. Got out of the car and I went into the hotel through right here (indicating).

Inside the hotel we met approximately here. There is a wall there with telephones.

[119] Q. And did you meet anybody inside the Hilton Hotel?

A. Mr. Lonardo I met.

Q. Okay. By the way, were you wearing a body recorder at this time?

A. No, I wasn't.

Q. Did you have a conversation with Mr. Lonardo?

A. I just met him and told him "Here's the keys." At that time my pager went off and I told him I had to make a phone call then at that time, so he just left and went ahead and walked outside.

Q. Now, do you recall what his instructions were to you during the initial phone conversation before you left for the Hilton?

A. Yes. He told me to come, park the car in the parking lot. He didn't say—well, he said "Behind the Hilton in the parking lot, and come inside and give me the keys."

Q. And you gave him the keys; is that correct?

A. Yes, I did.

Q. After you gave him the key, what occurred next?

A. At that time then he went ahead and walked out of the building. I don't know to what point.

So I went ahead and proceeded to make my phone call. And Mr. Lonardo—I was talking on the phone and then he come out to a point, like I said I don't know [120] where, then he came back in to see me.

Q. Did you and he have a conversation at that time?

A. Yes, we did.

Q. What was the nature of that conversation?

A. Well, he came back in and he asked me what kind of a car was I driving and what part of the car the cocaine was stored away in.

Q. What did you tell him?

A. I told him I was driving my black Chevelle and showed him—pointed pretty much where it was parked at and told him it was—the cocaine was under the passenger side of the seats.

* * * *

DIRECT EXAMINATION OF HARDRICK CRAWFORD, JR.

[598] BY MR. McHARGH:

Q. Now, do you recall a meeting that took place between Mr. Greathouse and a gentleman by the name of Angelo Lonardo?

A. There were several meetings.

Q. And directing your attention to May 12 of 1984, do you recall a meeting on that date?

A. Yes, I do.

MR. WILLIS: Your Honor, I raise an objection that was raised with reference to the questions of this nature previously.

THE COURT: Well, let's approach side bar so there is no confusion.

(Thereupon, the following proceedings were had at the side bar out of the hearing of the jury:)

MR. WILLIS: I am reemphasizing the objections that I made earlier in connection with the testimony by Mr. Greathouse concerning these prior conversations he supposedly had with Mr. Lonardo, whether taped or untaped, recorded or unrecorded I guess is a better word.

I continue to maintain that no conspiracy has been [599] shown. But even if we assume that a conspiracy existed between Lonardo and Bourjaily, the inception couldn't possibly be more than the 23rd or 20-something, a day or two before when the phone call was made in which some stranger was on the phone, that would be the inception of the conspiracy.

And I don't feel that you can retroactively make one a member of a conspiracy. And therefore this conversation that supposedly took place two weeks before wouldn't under any circumstances be admissible against Mr. Bourjaily.

THE COURT: All right. In other words you have a continuing objection as the Court says you could have.

MR. WILLIS: Right. I want to reemphasize that such is the case.

THE COURT: Fine.

MR. DeVAN: Your Honor, I have no objection to his observations, but if we are going to get into any conversations he had with Greathouse in relation to Mr. Lonardo or setting up Mr. Lonardo, I would certainly object to that.

* * * *

DIRECT EXAMINATION OF RICHARD DORTON
* * * *

[745] Q. Where were you when the call was received on the beeper on May 24th?

A. We were at the Sheraton airport in Cleveland.

Q. Who else was present?

A. Special Agent Crawford, Cohrs, and Fiatal.

Q. After the pager was activated, what if anything occurred?

A. Greathouse returned a telephone call to the number that had called him which was printed on the pager.

Q. Was that telephone call in any way recorded?

A. I believe it was. I don't remember.

Q. Do you recall reviewing with anyone the content of the first phone call about 2:30 on May 24th?

A. Yes, I did, after the calls. I think I was present during the call, as I remember.

Q. Was the person on the other end of the phone identified by Mr. Greathouse?

[746] A. He identified Mr. Lonardo.

Q. Okay. And did he tell you what Mr. Lonardo and he had talked about on that first phone call on May 24th, 1984.

MR. DeVAN: Objection, your Honor.

THE COURT: You may answer yes or no.

A. Yes.

BY MR. BAKEMAN:

Q. What next occurred on the 24th relative to this investigation?

A. That evening, about 7:30, he received another page with the same code.

Q. Okay. And after the beeper was activated, what if anything did Clarence Greathouse do?

A. He returned a call to the number that was printed on the beeper.

Q. After he returned the call, did he identify the person to whom he was talking with?

A. Mr. Lonardo.

Q. Did you have a conversation with Mr. Greathouse as to the nature of the conversation between himself and Mr. Lonardo at approximately 7:30 on the 24th?

A. Yes, sir.

Q. And what did Mr. Greathouse tell you?

MR. DeVAN: Objection.

[747] THE COURT: Sustained.

BY MR. BAKEMAN:

Q. What next occurred on the 24th?

A. He received another call about 10:30.

Q. And where was Mr. Greathouse when he received the call on the beeper, or excuse me, where was the call received?

A. It was on his beeper with the code 007.

Q. And after he received that call, what next occurred?

A. He returned the call to Mr. Lonardo.

Q. And after the phone conversation between Mr. Lonardo and Mr. Greathouse, what if anything did either yourself or Mr. Greathouse do?

A. He went to the lobby of the Sheraton and met with Mr. Lonardo.

Q. Okay. Where were you?

A. I was behind him. I followed him downstairs.

Q. Where did Mr. Greathouse go?

A. They went into the coffee shop.

Q. Do you recall approximately how long they were in the coffee shop?

A. About 10 minutes.

Q. And this was the coffee shop at the Sheraton Hopkins; is that correct?

[748] A. That's correct.

Q. Where did you station yourself while they were at the coffee shop?

A. In the lobby across from the entrance to the coffee shop where I could see the entranceway.

Q. Subsequently did you observe anybody leaving the coffee shop?

A. About 10 minutes after they—Greathouse entered, he and Mr. Lonardo came out and walked up the hall to the elevator bank.

Q. This person that saw you exit the coffee shop there at the hotel, do you see him in the courtroom today?

A. Yes, sir.

Q. Would you please identify him and indicate to the Court and jury what he is presently wearing?

A. It's the gentleman seated facing the—at the far side of the table wearing a brown coat and yellow shirt.

MR. BAKEMAN: Your Honor, may the record reflect the witness has identified the defendant Angelo J. Lonardo?

THE COURT: It may.

BY MR. BAKEMAN:

Q. After you observed Mr. Lonardo and Greathouse exit the coffee shop, where did they proceed to go?

A. Took the elevator to the sixth floor.

[749] Q. And where did you go?

A. Took another elevator to the sixth floor.

Q. Can you tell the jury the events that occurred up there on the sixth floor, as best you recall?

A. They walked down the hall toward Mr. Greathouse's room. I followed them, and his room was down the hall and around a corner.

I waited until they turned the corner and started down the hall. And Mr. Lonardo stepped back and looked down the hall at me, and I turned and fumbled in my pocket like I was taking a key out to put it in a room door there.

Q. Did there come a time when Mr. Lonardo and Greathouse went into a room?

A. Yes, sir.

Q. After they entered the room, where did you go?

A. To the room next door.

Q. Were you able to observe from the room you were in as to what was taking place with Lonardo and Greathouse?

A. Yes, sir. I could observe through a video monitor the activities in the room with Mr. Lonardo and Greathouse, and I could hear the conversation through a mike that was in the room.

Q. Were you able to hear the conversation between Mr. Lonardo and Mr. Greathouse?

[750] A. Yes, sir.

Q. By the way, after you were in the room, did there come a time when Mr. Greathouse exited his room?

A. Yes, sir. He came to the door of the room I was in, and was given two grams of cocaine.

Q. And were you able to observe what had happened with the two grams of cocaine that was given to Clarence Greathouse?

A. They took it back into Greathouse's room. Mr. Lonardo was seated at a table in the room and Greathouse sat down across from him and handed him the cocaine.

Q. Was any portion of that cocaine used on the 24th?

A. Yes.

MR. DEVAN: Objection, your Honor.

THE COURT: He may answer.

BY MR. BAKEMAN:

Q. Yes?

A. Yes. They cut a couple of lines there.

Q. What happened to the balance of the cocaine the evening of the 24th?

A. Mr. Lonardo put it in his pocket and left with it.

Q. Okay. Turning your attention to May 25th, 1984, were you again active in the investigation now before the Court?

[751] A. Yes, sir.

Q. Approximately when did you arrive in the company or the presence of Clarence Greathouse?

A. Shortly after noon.

Q. Okay. And when if anything, or what time was the first thing to have occurred relative to this case?

A. About 5:30 in the evening, Greathouse got a page from Mr. Lonardo.

Q. Were you present when the page was activated?

A. Yes, sir, I was.

Q. Did you observe the readout on the page?

A. Yes, sir, I did.

Q. And can you again tell the jury the observations of the page as you best recollect?

A. I don't remember the number, but it was 007 as it had been the day before.

Q. After the page was activated, what if anything did Clarence Greathouse do?

A. Returned a call to Mr. Lonardo.

Q. Where did he return the phone call from?

A. From the—(pause) from the lobby of the hotel.

Q. The first phone call that he received on May 25th?

A. I don't remember which call it was. One of the calls he returned immediately from his room and—

Q. And after he—excuse me for a second. (Pause.)

[752] And after he immediately returned the first phone call, was there a second phone call made?

A. Yes, sir.

Q. Where was the second phone call made from?

A. From the lobby telephone bank adjacent to the elevators.

Q. Between the first phone call and the second phone call, did you have a conversation with Clarence Greathouse?

A. Yes, sir.

Q. Did he tell you why he had to go to the pay phones in the lobby of the Sheraton hotel?

A. Mr. Lonardo—

MR. DeVAN: Objection.

THE COURT: He may answer.

Did he tell you; yes or no?

THE WITNESS: Yes.

BY MR. BAKEMAN:

Q. What did Mr. Greathouse tell you as to the reason to go to the lobby?

MR. DeVAN: Objection, your Honor.

THE COURT: Overruled.

A. Mr. Lonardo was upset with him for making a call from a non-pay phone.

Q. Now, the first phone call—

[753] THE COURT: Now again I instruct the jury that as to what Mr. Lonardo was upset about, that testimony, that's just to be used by you as to what he said; not for the truth of what he said.

BY MR. BAKEMAN:

Q. The first phone call on May 25th at approximately 5:30, was that recorded up in the room that he was in?

A. Yes.

Q. Okay. The phone call down in the lobby, was that recorded?

A. It was not.

Q. Can you tell the jury why that phone call was not recorded?

A. It was at a public phone and there were other people in the area, and it was just difficult to put a recorder on a phone in a public area.

Q. That Mr. Greathouse was making his phone call to Mr. Lonardo, was that the only investigation going on that evening?

A. No, sir.

Q. Were you present when that second phone call was made down in the lobby?

A. Yes, sir.

Q. Besides yourself and Mr. Greathouse, were any other persons present?

[754] A. No other FBI people were there. There were people in the area, but I was next to him when he made the call.

Q. What was your role during the conversation between—was that to be between Greathouse and Lonardo?

A. I was attempting to overhear as much of the call as I could.

Q. Were you able to hear what Mr. Greathouse said?

A. Yes.

Q. Were you able to hear at any time any portions of the conversations from the person who was calling Mr. Greathouse?

A. Yes.

Q. Were you able to distinguish as to how many people were speaking on the phone?

A. Yes.

Q. And how many people were speaking on the phone?

A. There were two talking to Mr. Greathouse at separate times.

Q. At separate times. Now, do you recall what Mr. Greathouse actually said on the telephone down in the lobby of the Sheraton Hopkins?

A. I heard—

MR. DeVAN: Objection, your Honor.

THE COURT: Yes or no?

THE WITNESS: Yes.

[755] BY MR. BAKEMAN:

Q. What did you hear Mr. Greathouse say?

MR. DeVAN: Objection.

THE COURT: Overruled.

A. He responded to a statement made by Mr. Lonardo about—he was asked the question or he was—Mr. Lonardo made the statement that he had a buyer for the Christmas trees. And there was discussion about the clarity and the rock content of the merchandise.

Q. Now, did there come a time when a third phone call was had on May 25th, 1984?

A. Yes.

Q. Do you recall approximately what time that was?

A. Approximately 7:30, 7—just before 8:00 o'clock, I believe.

Q. Where did that phone call take place?

A. Again at the same phone bank in the lobby of the Sheraton.

Q. And prior to that phone call being made, had Greathouse received any message or was his page in any way activated?

A. Yes.

Q. Did you see the page when it was activated?

A. Yes.

Q. Do you recall what you observed on the screen of [756] the page?

A. It was the same phone exchange. I don't remember the number, but it was again 007.

Q. And you indicated this third phone call was made in the same lobby as the second one; is that correct?

A. Yes, sir.

Q. Was there any difference, though, as far as the manner in which that phone call was made as compared to the first one down in the lobby?

A. Yes, sir.

Q. What was the difference?

A. That call was recorded.

Q. How were you able to record the phone conversation this time, whereas before you were not able to record the conversation?

A. We were able to put a body recorder on Mr. Greathouse. And I was able to take the microphone from the recorder and the way I positioned Greathouse at the telephone, to put the mike over the earpiece of the phone.

Q. Now, did you have a conversation with Mr. Greathouse after this third phone call on May 25th?

A. Yes.

Q. Where did that conversation take place?

A. Back up in the room that was next to Greathouse's [757] room.

Q. By the way, backing up for a moment, after the second phone call, or the first phone call from the lobby, did you have a conversation with Mr. Greathouse about the content of that phone conversation?

A. Are you talking about the 5:00, 5:30 call?

Q. Right, from the lobby.

A. Yes.

Q. Who was present when Mr. Greathouse was debriefed regarding that conversation?

A. Myself, Agent Cohrs, Fiatal and Crawford, and I think Connole maybe.

Q. Going back to the one that was made between 7:30 and 8:00 o'clock, did you go back to the motel room?

A. Right.

Q. Did you have a conversation with Clarence Greathouse regarding what the conversation was had between himself and Mr. Lonardo?

A. I think we went back in and made the tape on that one.

Q. Do you recall the content of that tape?

A. Yes.

Q. What do you recall the content to be?

MR. DeVAN: Objection again, your Honor.

THE COURT: Sustained.

[758] BY MR. BAKEMAN:

Q. Did you and Greathouse have any conversation as to what steps would take place next?

A. Yes.

Q. And who else was present during this discussion?

A. Same agents I have named previously.

Q. What was decided?

A. That we would take a kilo of cocaine and transport it, per instructions that had been given, to the Hilton hotel on Rockside Road.

Q. Okay. Who gave the instructions?

MR. DeVAN: Objection.

MR. BAKEMAN: I'll withdraw that for a moment.

BY MR. BAKEMAN:

Q. When you talked to Mr. Greathouse after this third phone conversation, did he identify the person he was talking to?

A. Yes.

Q. And who did he identify the person to be?

MR. DeVAN: Objection again, your Honor.

THE COURT: Overruled.

A. Mr. Lonardo.

Q. You heard the tape of that conversation; is that correct?

[759] A. That's correct.

Q. Were there any instructions given in that tape-recorded conversation?

A. Yes, sir.

Q. Do you recall what the instructions were?

MR. DeVAN: Objection.

THE COURT: Sustained.

BY MR. BAKEMAN:

Q. But you knew what the instructions were; is that correct?

A. Yes, sir. They were on the tape.

Q. Now, regarding the cocaine, what if anything did you do?

A. Agent Fiatal and myself placed four quarter keys in a Sheraton plastic laundry bag and I accompanied Greathouse to his car, and we drove to the Hilton Inn on Rockside Road or drove to the Bob Evans restaurant in front of the Hilton Inn on Rockside Road.

Q. Would you recognize the yellow Sheraton bag if you saw it again?

A. Yes, sir.

* * * *

[773] Q. After you observed Lonardo and Greathouse in the lobby, what if anything did you do?

A. Lonardo was facing me, facing the doors, so I backed my car out of this—out from under this portico and away from the plate glass doors.

I was afraid he would recognize me. I backed out into the parking lot then and drove down this way.

Q. Can you show the jury the path your vehicle took?

A. I came, backed out from under the portico and came south in the parking lot in the driveway lane that is just next to the hotel.

I came down near the end of the parking lot, and made a right turn into the center lane of the park area.

Q. While you were driving your vehicle, did you observe anything unusual?

A. I saw a white Olds Toronado with a male, white male sitting behind the steering wheel parked right in this area here. Unusual because he was—

MR. WILLIS: Objection.

THE COURT: Sustained.

BY MR. BAKEMAN:

Q. Can you tell the jury why it was unusual for the male sitting there?

MR. WILLIS: Objection, your Honor.

THE COURT: He can answer that.

[774] A. He was facing away from the hotel and he was in an area away from the other parked cars. It looked suspicious to me.

Q. Were you able to observe the person sitting in the vehicle?

A. Yes, sir.

Q. Would you recognize that person again if you saw him?

A. Yes, sir.

Q. Do you see him in the courtroom today?

A. Yes, sir.

Q. Would you please identify him for the Court and jury and indicate what he is presently wearing?

A. That's Mr. Bourjaily. He is wearing a gray sports jacket and blue slacks.

MR. BAKEMAN: Your Honor, may the record reflect the witness has identified the defendant William Bourjaily?

THE COURT: It may.

BY MR. BAKEMAN:

Q. After you observed Bourjaily sitting in the white Toronado, where did you proceed to go?

A. I drove north in the center parking lane and pulled into a parking spot about four car—about four spaces away from Greathouse's car.

[775] Q. If you saw a picture of the Toronado again could you recognize that?

A. I think so, yes, sir.

Q. Showing you what's been marked for purposes of identification as Government's Exhibit 17, can you identify that?

A. That's an Olds Toronado exactly like what was sitting in the parking lot.

Q. And one that Bourjaily was sitting in?

A. Yes.

Q. After you parked your vehicle, what if anything did you do?

A. I observed Mr. Lonardo exit the side door of the hotel and come down the walk to Greathouse's car, walk around the car on both sides.

He went down one side, came back the other, and then walked in this direction, walked south. And at that point there was a car in front I think that people had gotten into and turned their lights on, and I turned and looked the other way.

Q. So did you see where Mr. Lonardo walked to?

A. I saw him walk this direction. I didn't see him—I didn't see where he went.

Q. Did there come a time when you again saw the defendant Lonardo?

[776] A. Yeah. When I looked back around, after a few minutes I was looking the other direction trying to find some of our personnel, he was walking back to the 1970 Chevelle, Greathouse's car.

Q. He being defendant Lonardo?

A. Mr. Lonardo.

Q. Okay. And after he got back to the Chevelle, what if anything occurred?

A. He unlocked the right passenger door, leaned in.

Q. How did you know that the door was locked?

A. I locked it when I had gotten out of the car at the restaurant.

He reached under the seat and took out this yellow laundry bag.

Q. Government's Exhibit 14; is that correct?

A. That's correct.

Q. And did you know what Government's Exhibit 14 contained?

A. Yes, sir.

Q. What was that?

A. That was four quarter keys of cocaine.

Q. Now, how far away from Lonardo were you when you were making these observations?

A. Maybe three or four parking spaces.

Q. Was there anything obstructing your view from where [777] you were parked to where Mr. Greathouse's car was parked?

A. No, sir. There was a car sitting next to me, but it was a 280Z Datsun with a low front end and I was looking over—right over the hood of that car.

Q. After Mr. Lonardo removed the yellow laundry bag containing the cocaine, what if anything did you see Mr. Lonardo do?

A. He walked from Greathouse's car to the Toronado like was pictured a moment ago here, and handed the yellow bag to Mr. Bourjaily.

Q. Where was Mr. Bourjaily's car parked at that time?

A. He had moved up and was about either two or three parking spaces south of Greathouse's car.

Q. And after you saw Mr. Lonardo give the defendant Bourjaily the package of cocaine, what if anything did you do?

A. I backed my car out and pointed my front end in the direction of Mr. Bourjaily's car.

* * * *

[778] A. This is the motel and the walkway. And the location of Greathouse's car, it's a little out of proportion, my car and Mr. Bourjaily's car.

Q. Now, which direction was Greathouse's car facing?

A. Toward the motel.

Q. (Marking.) Would that be a fair diagram?

A. Yes, sir.

Q. Which direction was Mr. Bourjaily's car facing?

A. Same direction.

Q. (Marking.) Would that be again a fair representation of the direction of Bourjaily's car?

A. Yes, sir.

Q. Where was Bourjaily sitting in the car when you observed Lonardo hand him the package?

A. Driver's seat behind the steering wheel.

Q. And between your car and the Bourjaily car, were there any other vehicles?

A. Yes.

Q. Where was that located?

A. There was a vehicle next to me right here, and there was another one that was parked well back that I had an open view right down to his car.

Q. Then you indicated after you saw Lonardo hand the package to the defendant, you pulled your car out; is that correct?

[779] A. That's correct.

Q. And where, what direction did you head?

A. I pulled out and pulled this direction—I'm sorry—pulled out and pulled in this direction where my headlights were shining on Mr. Bourjaily's car.

At that time, as soon as the package was handed from Mr. Lonardo to Mr. Bourjaily, the agents knew then to effect the arrest, and that's why I moved my car in that position.

Q. You can resume the stand.

MR. BAKEMAN: Just a second, your Honor.

(Pause.)

BY MR. BAKEMAN:

Q. Now, Mr. Dorton, you indicated that it was dusk; is that correct?

A. That's right.

Q. Did you have any problem observing what you had testified to having occurred on May 25th, 1984?

A. No, sir.

Q. And what time of day was this again?

A. A few minutes past 8:45.

Q. 8:45.

* * * *

[792] BY MR. WILLIS:

Q. What would be your best estimate as to the precise time that the arrest took place, the arrest of Mr. Bourjaily?

A. 9:00 o'clock or a minute or a few minutes before.

Q. And that arrest followed within seconds of the point when you say you observed Mr. Lonardo hand something to Mr. Bourjaily?

A. That's correct.

Q. Now, earlier you had testified about the lighting conditions at that particular time of day, and you said—you described it as being dusk for the want of a better word; correct?

A. That's correct, sir.

Q. Then at another point later you indicated that before this alleged transfer took place, that some person in a car turned on their lights and you sort of turned your head away, something to that effect, do you recall that?

A. Yes, sir.

Q. Right. So at least we can conclude from that that apparently that person felt they needed lights to drive their vehicle?

A. It was dusk. The vehicles coming in and out of the parking lot all had their lights on, and the parking lot overhead lights were on.

* * * *

[796] Q. So you can't tell us even whether or not he was in the hotel when Lonardo exited, can you?

A. No, sir.

Q. How long had you been in the parking lot of that hotel when Mr. Lonardo exited the hotel?

A. I don't—I didn't see him exit the hotel. When I saw him—

Q. When you saw him—

A. —I had been in the parking lot about two to two and a half minutes at that time. Yeah, two to two and a half minutes, probably.

Q. Now, one of the things that you told us was that when you saw Mr.—the car you have identified as being the one Mr. Bourjaily was in, that something appeared to be unusual about that?

A. Yes, sir.

Q. In other words, it was unusual for one person to be sitting in a hotel lobby in a car, that's unusual?

A. Well, the unusual part was that he was sitting away from the entrances and away from all other vehicles and sitting facing away from the hotel looking in the opposite direction.

Q. So you concluded that that was unusual because he [797] was sitting away from everybody?

A. Yeah. There is a narcotics deal going down so and he was away from everything sitting there by himself and he was someone that I didn't recognize, so I looked at him.

Q. Well, certainly if he was privy to the narcotics deal going down, it would seem he would try to put himself in a group where he wouldn't be conspicuous by being out there in the open, wouldn't he?

A. I don't know.

Q. You don't know?

A. I'm really not sure but.

He was unusual and I took a look at him, took a look at the car.

I was also looking, sir, for other of our agents because I'm not from Cleveland and there were agents out there that I didn't know and I wanted to be sure that I didn't put myself in a position of jeopardy when this arrest went down because they didn't know me.

Q. Now, did you see a van parked out there way off from everything else and the other cars?

A. Yes, sir.

Q. Did that appear unusual to you?

A. I knew what the van was.

Q. Right. It didn't appear unusual to you because you [798] knew that was an FBI van?

A. That's right.

Q. But if you had not been an FBI agent, and this van was sitting over there by itself, that would have appeared to you to be unusual, wouldn't it?

A. It was unusual, but the van was parked on the back side of the south, extreme south side of that parking lot against the outside perimeter of the parking area.

Q. Off by itself?

A. No. There was a couple other cars to the right of the van, as I remember.

Q. Now, there were a number of cars in that lot; correct?

A. Oh, in the parking lot?

Q. Yes.

A. Oh yes. Absolutely.

Q. It was crowded, it was a Friday night; correct?

A. The front area was crowded, yes.

[800] Q. So there was at least some cars between your car and Greathouse's car; correct?

A. Yes, sir.

Q. Right. And there were at least twice as many cars between your car and the spot that you have indicated Bourjaily's car was in?

A. I think I said that there was a car beside me and that the other spaces were open there. There was maybe a car beside me and maybe one more.

And Mr. Bourjaily's car, if you will note, was pulled over the stripe that divides the parking areas. It wasn't set right in the middle of that parking space. It was moved forward a couple of feet so it made my view very easy.

Q. You now remember that to be the case. You are aware you didn't tell us that before; correct?

MR. BAKEMAN: Objection, your Honor.

THE COURT: Overruled. He may answer.

BY MR. WILLIS:

Q. And you are aware you didn't mention anything about Mr. Bourjaily's car being over this line that divides the spaces between the two cars?

A. I didn't mention it. I didn't realize that I [801] didn't.

Q. Oh, you didn't. Did you put it in any report?

A. Did I?

Q. Yes.

A. No, sir. I wrote no reports.

Q. So you are depending on your memory now which is about six, seven months old?

A. Right.

Q. Why didn't you write that down at the time since it was significant that you could see over this—

A. There were other agents.

Q. —Datsun?

A. There were other agents there, Mr. Willis, that put together an arrest log.

And I felt that the information that was in the log was sufficient to cover what had gone on that night.

Q. But the log doesn't even address your observations, does it?

A. No, sir.

Q. But you did deem it significant when you originally testified to mention the smallness of this Datsun which allowed you to look over top of the car and have a good view of Bourjaily's car, you told us that the first time around?

A. Right.

[802] Q. And you also told us as a matter of fact that there was some other car that had backed out?

A. Not pulled all the way forward.

Q. Not pulled all the way in, in order to further accommodate your testimony; correct?

A. That was my statement, I think.

Q. Now, this bag, Exhibit 14-A, is that a bag that sort of lights up, you know, when artificial light hits it and a fluorescent type?

A. I don't think so.

Q. You don't think so.

A. No.

Q. So then it would just appear to be a dull bag at night?

A. It's a yellow bag at night.

Q. You could see that, you could say it was yellow as distinguished from some other color?

A. It is certainly not black or maroon.

Q. Okay. Now, would you say then that the distance from where you place Mr. Bourjaily's car, to the back, the perimeter of this lot in the area under these bushes

or nearby where you placed the FBI van, would you say that's in excess to 250 feet?

A. I don't think so, no. I don't—

Q. 200?

[803] A. A hundred 50 at the most.

Q. Would you accept the statement that it's 208 feet?

MR. BAKEMAN: Objection.

MR. WILLIS: He might reject it.

THE COURT: He may answer.

BY MR. WILLIS:

Q. Yes. Okay?

A. If that's what the distance is, I would accept it, yes. I wouldn't argue with that.

Q. Okay. And certainly there were some cars between this point where you have indicated approximately the FBI van was parked, and the area up in here where you have indicated Greathouse's car was parked and where you indicated Mr. Bourjaily's car was parked, there were other cars between Bourjaily's car and the agents van; right?

A. I think, yes. Yes.

Q. All right. Now, and this van, the height of the van is—what type of van was it, incidentally?

A. What do you mean what type of van?

Q. Was it a Ford, was it a Datsun?

A. No. It was an American made like a Dodge 200 series, a Chevy 20 series, a Ford 250, 150.

Q. So it would make it approximately just slightly higher than this car here?

A. Top of the van I guess would be six foot or maybe a [804] little more.

Q. And it has a back window and a side window?

A. Yes, sir.

Q. Right. So that if that is the type of van that these officers were in, certainly they would have a lot of difficulty seeing through the cars what was taking place in Bourjaily's car, wouldn't they?

A. Mr. Willis, I don't know what they saw from that van.

Q. Well, just as a trained investigator, 15 years.

A. I wasn't in the van, sir.

Q. I understand. You can deal in abstractions, can't you?

A. Sometimes I think, yes.

Q. Let's do that. You have described the van and you have seen it. You told us that there were cars between the Bourjaily car and the van?

A. Yes, sir.

Q. You know the height of this car right here, and you have also told us that Bourjaily's car was pointed east which would place the driver on this side; correct?

A. Correct.

Q. Correct.

A. That's correct.

Q. And you said there were cars to the south of [805] Bourjaily between Bourjaily's car and the car the FBI agents were in, right, the van they were in, you said that?

A. Did I say that?

Q. Yes.

A. I don't remember saying that. I don't know. There were other FBI cars up there besides the van.

Q. We are talking about the van; right?

A. We are talking about the van.

Q. Right.

A. I wasn't in the van.

Q. Given those facts, don't you agree that the persons in the van wouldn't be able to see any activity that was taking place on the driver's side of the Bourjaily car?

MR. MCARGH: Objection.

THE COURT: Sustained.

BY MR. WILLIS:

Q. And you agree that simply because they are FBI agents, that doesn't give them the ability to see through metal?

A. Would I agree that—

Q. Yes.

A. —that an FBI agent can't see through metal?

Q. Right. With his natural eye.

A. Yes, I would.

[806] Q. Okay. Now, sir, how many feet would you say you were at this spot to where you placed the Bourjaily car.

50 feet?

A. 50 feet.

Q. 50 feet. And you are telling us that Mr. Lonardo went to the driver side or the passenger side of this Greathouse car?

A. I think my statement was, sir, that he went to the passenger side on his second trip to the car.

Q. And he left this car and walked up to this area where the Bourjaily car was parked, is that your testimony?

A. Walked up the driver's side of Mr. Bourjaily's car.

Q. And the Bourjaily car was still in this spot right here?

A. He had moved to that spot, yes, sir.

Q. He had moved to this spot, is that your testimony?

A. Yes, sir.

Q. Where was he before he moved to this spot?

A. Down in the end of the parking lot in the extreme south end.

When I went down and made the turn in the parking lot after leaving the front of the hotel, he was parked at the extreme south end of that parking area.

Q. Don't you agree that he had to pull in between two [807] cars to get in this spot?

A. I didn't see him pull in there so I don't know. There was no car beside him.

Q. There was no car north of him, is that what you are saying?

A. That's what I'm saying, yes, until you got to the cars next to me.

Q. And your car was pulled in as far as you could go, I take it, to occupy fully this space?

A. Yes, sir.

Q. Was there a car here?

A. Yes, sir.

Q. So that placed you on the north side of your car, the driver's side of that car; right?

A. That's right.

Q. What kind of car were you in?

A. In a Ford Fairmont.

Q. Is that a four door car?

A. No, sir.

Q. And you are telling us that Mr. Lonardo handed a package to Mr. Bourjaily?

A. Yes, sir.

Q. What hand did he give it to him, what hand did he have it in?

A. Two hands.

[808] Q. Two hands. It takes two hands to carry a thousand grams?

A. Are you asking me why he did that?

Q. No. No. I am asking you does it take two hands to carry a thousand grams?

A. It wouldn't for me. I can't speak for anyone else.

Q. Okay.

A. Wouldn't normally think so.

Q. And he carried it in front of him?

A. Yes, sir.

Q. No effort was being made to conceal it?

A. No. He had it like this (indicating).

Q. That follows, doesn't it, if he had it like that no efforts were made to conceal it; correct?

A. That's right.

Q. Now, what hand did Bourjaily take it in, or did he accept it in two hands—with two hands? I'm sorry.

A. I don't know.

Q. So what you are really telling us is that you saw him put it in the car and you assume Bourjaily accepted it in his hands; correct?

A. Correct.

* * * *

DIRECT EXAMINATION OF ROBERT FIATAL

[870] Q. And you reviewed the tape of that call, sir?

A. Yes, I did.

Q. Did you discuss the substance of the call with Mr. Greathouse?

A. Mr. Greathouse also discussed the substance, and comparing the two they were essentially the same.

MR. DEVAN: Objection.

THE COURT: Overruled.

BY MR. McHARGH:

Q. What next occurred, sir?

A. Mr. Greathouse, due to the instructions from Mr. Lonardo, had to go down to a pay phone in the lobby of the Sheraton Hopkins to return his phone call to Mr. Lonardo.

Q. And what happened, if anything?

A. Mr. Greathouse went down to make this call and he was accompanied by Special Agent Richard Dorton.

The call was made, Mr. Greathouse came back up to room 662, and there he related to me the contents of this conversation with Mr. Lonardo and another individual.

Q. Now, you said that Mr. Greathouse related to you the contents of that conversation?

A. Yes, sir, he did.

* * * *

[875] Q. That's the last call to which you made reference to?

A. Yes, sir.

Q. And that call was precipitated by first having received a call through the beeper; is that correct?

MR. DeVAN: Objection.
 THE COURT: Overruled.
 Is that correct is the question.
 THE WITNESS: Yes, it is.

BY MR. McHARGH:

Q. And the beeper had gone off and 007 was in the beeper; is that correct?

A. 007 and the phone number 524-7806.

Q. And that phone number 524-7806 was located where?

A. Again it's a pay phone located within the lobby of the Hilton South in Independence, Ohio.

Q. Now, as a result of your review of the recording of that second call and your discussions with Mr. Greathouse, did you take any steps?

A. Yes. From the recording itself I was able to determine from Mr. Lonardo's instructions that the narcotics transaction was taking—

MR. DeVAN: Objection.

[876] THE COURT: Well, the question is did you take any steps?

THE WITNESS: Yes, I did.

BY MR. McHARGH:

Q. And what prompted you to take those steps, sir?

A. The recordings, the actual telephone conversations recording what I heard that evening.

Q. And what was it about that recording that caused you to take some steps?

MR. DeVAN: Objection.

THE COURT: Overruled.

A. The instructions were given by Mr. Lonardo on how to make a delivery of the cocaine.

Q. And what were those instructions?

A. The instructions were for Mr. Greathouse to proceed to the—

MR. DeVAN: Objection.
 THE COURT: Overruled.

A. —back parking lot of the Hilton South, and he was to get out of his car, go into the Hilton, give the keys to the car to Mr. Lonardo.

Mr. Lonardo would proceed out to the parking lot where his friend would be waiting and he would take care of the transaction.

Q. Where whose friend would be waiting, sir?

[877] A. Mr. Lonardo's friend.

Q. Was Greathouse to take anything with him?

A. Mr. Greathouse was to take one kilogram of cocaine.

Q. Now, you are located there at the Sheraton hotel in room 660 or thereabouts?

A. Yes, sir.

Q. What did you next do then as a result of that call?

A. As a result of that call, we were once again very rushed because of other matters, but myself and Special Agent Dorton took four approximately one quarter kilograms of cocaine, each quarter kilogram being packaged in two ziplock type bags so they were double secured one inside the other.

We put those four into a yellow plastic—a Sheraton hotel laundry bag.

* * * *

[882] Q. What if anything did you observe after your arrival?

A. When we came in, as I said it was dusk, but there was sufficient light to see the entire area, the entire back lot of the Hilton South.

There were very few if any cars parked in this back portion of the rear lot. After we had been there a few minutes, we saw Mr. Greathouse's vehicle come from this direction, that being the front of the Hilton South, down this lane and park approximately in this space right here with the front of the vehicle facing towards the Hilton South.

Q. Did you make note of any other vehicle on that occasion?

A. Prior to Mr. Greathouse going into that parking space, it was noted that there was a white Oldsmobile [883] which was riding around parking in several areas. This was several minutes prior to Mr. Greathouse's arrival.

That was the same—the individual driving this vehicle was later identified as William Bourjaily.

Q. Showing you what's been marked as Government's Exhibit Number 17, do you recognize that?

A. Yes. This is a photograph of the car which William Bourjaily was driving that evening.

Q. And what was that car doing when you first noticed it, sir?

A. When I first noticed it, the driver, the car itself was driving around the back lot.

In fact when I first noticed it it had stopped right in front of us and the driver was looking over the van, the driver himself seemed to be looking over the entire area that we were parked in.

Q. And why did you make note of that?

A. It looked very suspicious, in fact, No. 1, he looked over the van, he seemed to be driving around the area and seemed very—just his movements seemed like he was looking over the entire area.

Q. And the individual that was driving that van, did you come to learn his identity?

A. Yes, sir. He was later identified as Mr. Bourjaily. [884] Q. And if you saw him today would you recognize him?

A. Yes, I would.

Q. Could you identify him today?

A. Yes. He's seated at the defendant's table.

MR. McHARGH: Your Honor, may the record reflect an identification of the defendant William Bourjaily?

THE COURT: It may.

BY MR. McHARGH:

Q. All right, sir. What happened next?

A. After Mr. Greathouse pulled his vehicle in, he exited the vehicle and walked this way towards the Hilton South. Once he reached this corner of the building here he was outside our sight because of the angle.

Approximately one, maybe one and a half minutes later Mr. Lonardo came from the same direction as Mr. Greathouse had went into the Hilton South.

Mr. Lonardo proceeded directly to Mr. Greathouse's vehicle but—

Q. What if anything did he do upon arriving at Mr. Greathouse's vehicle?

A. Mr. Lonardo first looked in the driver's side window of the car, then walked around looking in the passenger side window of the car.

Q. By the way what kind of car was that?

[885] A. Black Chevrolet Malibu.

Q. All right. And you can continue, please.

A. After doing this, at this time the white Oldsmobile which I described earlier had parked in this space right here (indicating) facing away from the hotel.

Mr. Lonardo walked over to the vehicle and spoke to the driver of the vehicle. This driver later was identified as William Bourjaily.

Q. You couldn't overhear what he was saying?

A. No. I could just see Mr. Lonardo's lips move.

Q. All right. Continue.

A. Mr. Lonardo then walked back to Mr. Greathouse's vehicle. The driver of the white Oldsmobile William Bourjaily—

Q. What was that, sir?

A. —made a U-turn in this portion of the parking lot, drove up about two spaces down from Mr. Greathouse's vehicle, about one half car length behind Mr. Greathouse's vehicle.

Q. So if Greathouse was occupying the first row, that is his car?

A. Yes.

Q. Mr. Bourjaily's car would have stopped somewhat into that first row, but also—

A. Approximately one half car length behind, yes.

[886] Q. Were you able to see anything that happened after he arrived at that point that you have just described?

A. At that point Mr. Lonardo opened the passenger side door of the black Chevrolet Malibu, and crouched down, reached into the vehicle and pulled out the yellow plastic bag.

Q. By the yellow plastic bag, are you referring to Government's Exhibit 14?

A. Yes, sir, I am. And the same yellow plastic bag which you had me identify earlier.

Q. I believe that's 14-A. What happened next, sir

A. Mr. Lonardo turned towards the white Oldsmobile, carried the yellow bag over to the driver's window of the white Oldsmobile and handed it to the driver William Bourjaily.

Q. Now, was there anything obstructing your view of the events that you have just related to the ladies and gentlemen of the jury?

A. No, sir. No, sir.

Q. Would you go and get Government's Exhibit 14-A and show us, show the ladies and gentlemen of the jury how Mr. Lonardo carried that bag?

A. Mr. Lonardo carried the bag from the black Chevrolet Malibu to the white Oldsmobile being driven by William Bourjaily in this manner (indicating), carried it [887] to the driver's side, handed it through to Mr. Bourjaily who accepted it in the same manner.

Q. And you were able to see that, sir?

A. Yes.

Q. You can put that down.

Now, based on your vantage point from the rear of the van, you were looking through Mr. Bourjaily's car; is that correct?

A. A portion of what I saw was through the windows of Mr. Bourjaily's car.

Q. What happened next?

A. At the point that Mr. Bourjaily took the yellow package, myself and two other agents which were in the surveillance van exited the van, identified ourselves, ran to the two vehicles and placed Mr. Bourjaily and Mr. Lonardo under arrest for possession with intent to distribute cocaine.

Q. Do you recall approximately how long it took you to get from your van to Mr. Bourjaily's car?

A. It was approximately 50 yards, and I was running, probably dare say eight seconds.

Q. You run kind of fast.

A. I was running very fast, yes.

Q. And Mr. Lonardo and Mr. Bourjaily were placed under arrest?

[888] A. Yes. At the time of the arrival of the car, Mr. Bourjaily was still in the car, he was placed under arrest, removed from the car, and both were secured, that being they were handcuffed.

Q. Thank you. You can resume your seat, sir.

(Pause.)

Q. Sir, do you recall approximately when it was that you arrived at the Hilton Hotel?

A. It was approximately 8:42 p.m. that evening

Q. And do you have an idea or do you know how long after you arrived in terms of mintues or hours it took you to effectuate the arrest of Mr. Lonardo and Mr. Bourjaily?

A. Approximately six, five to six minutes.

Q. So everything you testified to after your arrival took about five, six minutes?

A. Yes, it happened very quickly.

Q. Now, in connection with the arrest of Mr. Bourjaily, did you cause a search of his automobile to be conducted?

A. Yes. After Mr. Bourjaily was secured, that being he was handcuffed, he searched the inside of the vehicle pursuant to the arrest of Mr. Bourjaily.

Q. Now, did you find the cocaine that Mr. Bourjaily had accepted?

A. Yes.

[889] MR. WILLIS: Objection.

THE COURT: Overruled.

A. I found it. You handed it to me before as what's marked as Government's Exhibit 14-A, the yellow plastic Sheraton laundry bag which contained approximately the four one quarter kilo packages of cocaine on the rear driver's side floor of the white Oldsmobile.

* * * *

CROSS EXAMINATION OF ROBERT FIATAL

[927] BY MR. WILLIS:

Q. And when Mr. Lonardo walked from, after having come out of the hotel and gone near Greathouse's car, he walked across that open space, you didn't have any trouble seeing him; right?

A. Would you please repeat the question?

Q. Yes. If I recall, you said that Lonardo came out of the hotel and then at some point he walked over in this area, somewhere over here where Bourjaily's car was before, you tell us, Bourjaily pulled his car up a space and a half or two from Greathouse's car?

A. Yes. After he went to Mr. Greathouse's car, then he proceeded to Bourjaily's car.

Q. That's what I said.

A. Okay.

Q. And you saw Mr. Lonardo carrying this package in both hands; right?

A. Yes, sir.

Q. And he was walking toward you then?

A. Yes, sir. In the same direction that we were [928] facing or opposite direction actually.

Q. Well, you were facing him looking out the back window, weren't you?

A. Yes, sir. I think we are saying the same thing.

Q. Okay. Now, and you are saying that he handed this package to Mr. Bourjaily?

A. Yes, sir.

Q. And you could see that?

A. Yes, sir.

Q. Without any difficulty?

A. No, sir.

Q. As a matter of fact, the driver side of the Bourjaily car was further from you than was the passenger side of his car?

A. Yes. The car was facing the hotel.

Q. So you could see right through that window what was taking place on the opposite side of the car?

A. Just a portion of what I saw, yes.

Q. What does that mean, "a portion of what I saw"?

A. I didn't have to see through the windows to see Mr. Lonardo carrying a package towards Mr. Bourjaily, no.

A. But you would have to see through the window to see him hand it to Bourjaily, wouldn't you?

A. Once he lowered it, because of the depth perception, once he lowered it so far into the roof line.

[929] Q. He simply could have been putting it in the car?

A. No, sir, he wasn't. He handed it to Mr. Bourjaily.

Q. And Bourjaily took it with both hands?

A. Yes, sir.

Q. This picture down here of the car, did you cause that to be taken, the Bourjaily car? Did you identify this?

A. Yes, sir.

Q. Did you move the seats on that car before you had the picture taken?

A. No, sir, I didn't.

Q. Do you know who pulled the seat back as far as it could go before that picture was taken?

A. Pardon?

Q. Do you know who pulled the seat back?

A. No, sir. I don't know that it was pulled back.

MR. McHARGH: Objection, your Honor.

BY MR. WILLIS:

Q. The agents would pull that back and then take a picture to try to demonstrate how difficult it would be for somebody to put a package behind the driver, they wouldn't do a thing like that, would they?

A. No, sir, not for that reason.

Q. When that picture was taken, were any other people present other than law enforcement personnel?

[930] A. I don't know, sir.

Q. What do you think, do you believe there were a lot of people around that car?

MR. McHARGH: Objection.

THE COURT: Sustained. Sustained, counsel.

BY MR. WILLIS:

Q. Well, the FBI seized that car that night, didn't they?

A. Seized?

Q. Yes.

A. It was driven back to the FBI building.

Q. And the FBI had control over that car when the picture was taken?

A. Yes, sir.

Q. Did you ever ask that any prints be taken off of that bag there to see if you could identify Mr. Bourjaily's as being thereon?

A. No, sir. I saw Mr. Bourjaily handle that.

Q. Does that answer my question?

A. I say no, sir, I did not.

Q. You didn't stop at that, did you?

A. No, sir.

Q. In other words, you are certainly not going to suggest that prints can't be lifted off of that paper?

[931] A. I don't know, sir.

Q. You never asked that any prints be lifted from the paper?

A. I didn't feel it was necessary.

Q. Now, do you agree that Mr. Dorton's car was closer to Mr. Bourjaily's car than was your van?

A. I don't know. I don't know where Mr. Dorton's vehicle was.

* * * *

INTRODUCTION OF GOVERNMENT'S EXHIBIT 1 AND 1A

[954] THE COURT: You may proceed.

MR. BAKEMAN: Your Honor, at this time counsel is reviewing the stipulation that we had agreed to at an earlier date dealing with the chain of custody and the lab analysis of the cocaine.

While they are doing that (pause), your Honor, at this time the Government would move to introduce [955] Government's Exhibit 1 and 1-A. In particular 1-A are the tapes of the Denny's Restaurant and 1-B is the transcript of the tapes from Denny's Restaurant on May 12, 1984.

THE COURT: Any objection?

MR. WILLIS: I have my same objections, your Honor, certainly that I have maintained throughout the Government's evidentiary presentation, and my 104 objections to all of these exhibits involving conversations with Mr. Lonardo and the like.

Certainly there has been no showing, and that would be the subject of my motion under Rule 29 when we arrive at that point. But I think even at this point I have to maintain my position in objecting to these exhibits on the basis of previous objections.

THE COURT: Do you wish to be heard on that?
 MR. BAKEMAN: We have no further argument.

* * * *

[973] THE COURT: Very good.

MR. WILLIS: —it contends that there was a conspiracy in existence between Mr. Bourjaily and Mr. Lonardo, and that by virtue of the existence of that conspiracy, all of the acts and statements made by either of the members of the conspiracy would be admissible against the other. That's under 801(d)(2)(E) as I believe the co-conspirator hearsay—exception to the hearsay rule.

There are certain critical aspects of that which are important. No, 1, before these statements and acts can be deemed admissible against a particular party, he must first be shown to have been a member of the conspiracy and the statement must have been made in furtherance of the goals of the conspiracy. And that raises in this case very, very serious problems.

No. 1, do we have a conspiracy? If I understand the ultimate impact of Mr. Greathouse's testimony, what was being discussed between Mr. Lonardo and Mr. Greathouse was the prospect apparently of the two of them selling drugs to some people. I get the idea that Greathouse tried to—that the Government is theorizing that there was some kind of an association between Greathouse and Lonardo with reference to this kilogram of cocaine that [974] wasn't strictly an instance of buyer and seller.

That is a very befuddling situation for counsel. Also in the course of the conversations between Greathouse and Mr. Lonardo from the tapes, there is a point reached where Greathouse is made aware that in the light of some statement from Peggy, there was some confusion and the people that apparently Mr. Lonardo was going to pass these drugs onto, that they were no longer interested and that they would have to be recontacted.

There is no evidence that Mr. Bourjaily was one of these "potential buyers" of the contraband. And we do have, according to the Government's evidence, which the Court I deem would tend to accept for purposes of this motion as being a fact, we have the testimony by Mr. Greathouse that there was another party on the phone and we have supposedly confirmation from Mr. Dorton that he heard a second voice on the phone.

The question then becomes given the lack of an identification of this second party—and Greathouse was quite specific he didn't know who it was and there is no evidence that tends in anyway to connect Mr. Bourjaily up to that voice. Indeed what little identification data we have is in the evidence and it comes from Mr. Fiatal and that is that it was reported to him by Greathouse that the other man appeared to be 40 to 50 years of age.

[975] Now, we also have some left-handed confirmation from Mr. Dorton that he read Fiatal's, what he called a 302, but in reality his raw notes. And what he was interested in was seeing whether or not it included the segments that he heard, which would be the voice. And if he had an opinion that the speaker was not 30—I'm sorry—40 to 50 years of age, then we can assume that he would have said, "Well, he didn't sound to be that old for me."

And we have no indications there, so therefore I think that the Government is stuck, assuming there was a second voice, with the idea that the man's age is placed between 40 and 50, and this is being made by 15 year FBI agent college graduate with the considerable experience in the field of investigations.

So that we have some serious questions as to whether or not that speaker is in fact Mr. Bourjaily. Now, admittedly the prosecutor tried to smuggle it into his objections, the idea for which I'm grateful because we can resolve that now. He suggested in one of his responses that the evidence was that Mr. Bourjaily was on the premises of the Hilton Hotel when all of the calls were

made. And there is just no evidence in the record to support that thesis, and I certainly don't think that he ought to be privileged to make that argument.

[976] And I was impressed by his statement that there was circumstantial evidence to prove that such was the case. And of course there is no circumstantial evidence to prove that. The only evidence, the only way you can come to that is that you have to further conclude that he was the speaker, and that is—or in those phone calls that second voice on the phone, and I have very, very serious problems with that assessment of the evidence.

And I think that the prosecutor in fact ought to be enjoined from making any such argument that at all times Mr. Bourjaily was on the premises of the hotel. I don't think that he ought to be allowed to make that type of an argument because there is a lack of evidential support for it.

Now, the question then is assume just for the moment that that speaker was Mr. Bourjaily. Can you use a hearsay statement to make one a member of a conspiracy, or must there be evidence apart from the hearsay declaration that you want admitted against a particular defendant that proves that he is a conspirator.

I don't think that statement can serve double duty. Now, the statement is that "A friend will be with me." Now, I think it's interesting that the original reference to a friend was a gentleman friend which was quite specific. And the second reference was a friend, and I [977] think that that leaves open the possibility that it could have been a woman or it could have been another friend who wasn't a gentleman, and there are all kinds of sophisticated arguments you can make around that theme.

But nonetheless, I don't think that that statement can serve double duty, that is to say it can serve to prove the existence of the conspiracy and also prove Bourjaily's membership at that rate.

But to go even further, we have to deal with another aspect. Let's assume that that is a part that the state-

ment can serve double duty to prove the existence of a conspiracy, No. 1, then that would be the earlier point at which Mr. Bourjaily could be deemed to have been a member. Then you have to ask yourself who are the members of the conspiracy, would that make the evidence that happened before that admissible against Bourjaily on the assumption that he was privy to the previous conversations and that he was a member, much a part of the group of potential buyers who were told that the price was confused and who were apparently—who had apparently lost all interest?

'Does that make all of that evidence admissible against him? Is that in furtherance of the conspiracy, assuming one exists, between Lonardo and Bourjaily as of that moment? I don't think so. I don't think that the [978] evidence would be admissible even under that posture of the case.

My concerns are even greater. When we think in terms of whether or not there were any conspiracies here, we know from the progenous position that the Government has taken at least insofar as Bourjaily is concerned, that there was some progress position, at least I heard Mr. Bakeman make that observation, and under his suggestion that there was evidence of that somewhere.

If they were the conspirators, then there is a good question as to whether or not Mr. Bourjaily was a member of that conspiracy.

On the other hand, let's suppose that Mr. Bourjaily was purchasing some drugs from a "combination" of Lonardo and Greathouse, and you recall in one of my answers one of his—one of my questions I asked him about money and he tried to suggest that he had partners.

We know that as between a buyer and seller in the absence of some evidence of a continuing course of conduct, such as not a conspiratorial arrangement because there is no meeting of the minds except to the extent that the buyer is interested in purchasing and the seller is interested in selling their interests, are not conspiring insofar as that one transaction is concerned.

And certainly if there is an arrangement or there [979] is a prior course of dealings where A constantly sells to B over a period of time, there is a conspiracy to the extent that A will buy from B, and B will buy from A, and A will call to C and it becomes a conspiracy in that context.

But where there is an isolated act, and that's all we have here, how do we know that the \$2,000 assuming Mr. Bourjaily was interested in purchasing drugs, was not the portion he was going to contribute to a purchase by—you know, to buy a segment of in gross amount of two pounds of cocaine that apparently was being sold?

And how do we know that his relationship was not—how do we know that he was privy to what was going to happen to the balance of this contraband?

So that, your Honor, I'm very concerned about the attitude that the Court is going to take.

With reference to my 104 objection, I have a Vinson, Enright problem here. I take the position that even, and I don't think a conspiracy has been shown as between Lonardo and Mr. Bourjaily to distribute cocaine as alleged in the indictment. And I don't think that the evidence is sufficient to allow the admission of all of these other hearsay declarations against Mr. Bourjaily.

And for that reason, your Honor, I feel that they ought to be excluded and the Court ought to rule that [980] there is no conspiracy between Bourjaily and Mr. Lonardo, and ought to eliminate that, all of this other evidence that I am constantly maintaining an objection against, ought to eliminate that from Mr. Bourjaily's case.

Now, whether or not he was in possession, that of course is another matter and of course that's another charge. And I think it's critical, your Honor, that the fact that the indictment charges the use of the telephone as against Mr. Lonardo, and those charges are not made against Mr. Bourjaily, and I think the Court has to factor that into its analysis because all the Government

had to do was to convince the jury that there was probable cause to believe that Mr. Bourjaily was that speaker. And then they could have indicted him on that telephone call, the two of them that supposedly went to the lobby of the Hilton Hotel.

So what they are saying in one breath is that there was not probable cause to believe that he was the speaker, but yet they would say that that same evidence is sufficient, is clear and convincing proof of the existence of the conspiracy. I think probably ask a lesser standard than clear and convincing which is the standard as I understand it that the Court has to measure the Vinson, Enright problem and the quantum of evidence relevant to a particular defendant when he raises a motion comparable to [981] the one I am putting before the Court.

Thank you.

* * * *

[983] THE COURT: Mr. Bakeman.

MR. BAKEMAN: Your Honor, before I get to my comments about whether or not we have established a conspiracy, I would just like to respond to a couple comments made by defense counsel.

First, and probably the only point I will agree with Mr. DeVan is that Mr. Greathouse was not a co-conspirator, he could not legally be a co-conspirator because he was in fact a Government agent. And I would further state that he was not one of the known or unknown co-conspirators.

Regarding Mr. Willis's comments about the phone counts, I would indicate to you that the phone counts correspond to taped conversations; not to the untaped conversation. So that fact that he was not charged would have no bearing on this Court's decision.

Mr. Willis also tried to indicate that in the first [984] phone conversation on May 25th, that he referred to the friend as a gentleman. And the second conversation he just said, "My friend."

Well, if you read the—as the Court will—the entire conversation Lonardo said, "My friend will be out in his car." So obviously we are talking in a singular and we are talking about in the masculine gender throughout the entire course of events on May 25, 1984.

Regarding whether or not the Government has proven by the preponderance of the evidence the existence of the conspiracy, I'll draw the Court's attention primarily to the conversation had on May—or excuse me—May 12, 1984. And it's interesting to note that their case captioned United States versus Tamargo, last name spelled T-A-M-A-R-G-O, cited 672 Fed. 2d, page 887, it's an Eleventh Circuit case, 1982, wherein the facts in that case were remarkably similar to this particular case and the conspiracy count.

The Government's position is that the outline of how the conspiracy was to develop during the course of events between May 12th and May 25th were outlined by Lonardo when Lonardo said, "But this coming week I will try to contact some people. See, they don't know who I'm talking to. I don't want them to know."

So from the very beginning, Lonardo has indicated [985] by his conversation that was recorded that the conspiracy would exist, that he would be contacting at least one other person, whether it be two, three or four.

Lonardo then went on to say, "The way we will do it is the way we did it with the one fellow." Greathouse describing the incident on the tape said, "I'm not going into offices. I'll go here and I'll drop this to 'em and then they can walk it to the office they want to. I'm not sitting in an office like before." Lonardo then said, "I'll tell you where to drop it." Greathouse said, "Okay."

So the parameters of how the delivery was to take place as part of the agreement was also outlined initially. Greathouse said, "I want half up front. We can sell it for 30." So there is an agreement as to cost.

Greathouse wants his money half up front and they are agreeing to sell the cocaine for \$30,000. To show

that Lonardo did fulfill his part of the conspiracy, that it was existing, on May 24th he indicated that he would have to recontact the people, like he said on the 12th, "I will contact people." He confirmed that he did in fact contact people by his statement on the 24th when he said, "I will have to recontact some people."

Lonardo further said on the 24th that the delivery would take place someplace other than the Sheraton hotel. [986] On the 25th we have the conversation, "I have a gentleman friend of mine here now and he has some questions to ask you about the trees."

So independent of what that third, second phone conversation indicated, and outside the credibility of Clarence Greathouse, we have Lonardo saying that he had a gentleman friend here and he wants to talk about cocaine. The third conversation Lonardo said, "I'll be in the lobby, you can bring in the key, the car key, and my friend will be out in his car and I'll just go over and, you know." And we can infer from that that the delivery was to take place in that fashion.

The Federal Court of Appeals for the Eleventh Circuit in a similar case, Tamargo, basically there was a series of phone calls monitored by the Federal Government. The individual said, "I have a supplier," and the Government agent indicated one of the phone calls he heard a second individual in the background, again was not able to identify the voice.

Then at the time the delivery took place there was in fact a second individual. He was arrested and charged with a conspiracy. And in response to Mr. Willis's argument that, hey, there may have been a conspiracy but my person wasn't involved in it back on May 12th, May 13th, May 14th or whatever day it may be, the Court of [987] Appeals faced a similar argument in Tamargo and said, "He may be found guilty of a conspiracy even if he did not join the conspiracy until after its inception."

And the Government's position in this case, at the very least that Bourjaily joined the conspiracy as of May

25th, 1984, and therefore is responsible for all the acts in that conspiracy.

I further indicate to you that even though Willis wants to enjoin me from making the argument that Bourjaily was at the Hilton Inn on May 25th, I think that nevertheless there is circumstantial evidence that he was there from as early as approximately 5:00 o'clock because the evidence goes to show that the phone calls that were made by Lonardo on the 25th, one at 5:00 something and one at 7:00 something I believe, that the phone number that was placed in the beeper of Greathouse and the number that Greathouse called back was a pay phone in the lobby of the Hilton Inn.

And the evidence was, "I have a gentleman friend of mine here," in the first phone call, his friend will be in the car, will take delivery. And when we instituted the arrest on the 25th at about 8:45, 8:47 in the evening, there was in fact a gentleman friend there in the car in possession of sufficient funds to buy the kilogram of cocaine as agreed on with half up front.

[988] So I believe there is evidence independent of what Willis attributes to be hearsay statements of an existence of a conspiracy. We have met that burden of proof by the preponderance of the evidence. And the Court should therefore overrule the defendants' motion and should, as indicated on prior, introduce all the evidence to the jury as to the issues of conspiracy.

MR. WILLIS: Yes. I'd like to respond very briefly, your Honor.

Mr. Bakeman's argument I think centralizes a critical point in this case. He relies on the particular statement made by Mr. Greathouse, and I think he rightly should because it emphasizes our position.

He tells us, and he is correct, that Mr. Greathouse indicates that he wanted half up front and then he says, "We can sell it for 30,000." Now, who is the "we," I mean who is the "we"? Isn't he telling—isn't he saying

that he and Lonardo can sell it for \$30,000? And that they should get half up front?

Now, if that is the thrust, if that is in fact what is meant by that statement, "We can sell it for 30,000 and I want half up front," doesn't it sound like Greathouse and Lonardo are the sellers, and that anybody that gets any drugs from them would be buyers?

And this points up my single act argument which is [989] that there is no, in the absence of any prior dealings, that there is no conspiracy or understanding as to prior dealings, that there is no conspiracy as between a buyer and a seller. That they have two separate interests; one, the buyer is interested in selling, and the purchaser is interested in buying. There is no meeting of the minds. They do not have any community interest. Their interests are different.

And I think that emphasizes, your Honor, our position here that there was no conspiracy as between Mr. Lonardo and Mr. Bourjaily. Certainly if that is the case, then all of this other evidence ought not to have been admitted against Mr. Bourjaily.

THE COURT: Anything further?

MR. DEVAN: Nothing further, your Honor.

THE COURT: All right. The Court finds from the evidence that's been put on by the Government, at the end of the Government's case, that the Government has proven by a preponderance of the evidence that a conspiracy did exist, that the defendants were members of the conspiracy, and that the hearsay statements were made in the course and furtherance of the conspiracy.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

(Title Omitted in Printing)

EXHIBITS 1C, 3B, 5B, 7B, 9B, 10B, 12B & 13B
(TRANSCRIPTS OF
TAPE RECORDED CONVERSATIONS)

GOVERNMENT EXHIBIT 1 C

FEDERAL BUREAU OF INVESTIGATION

(1) Date of transcription 5/21/84

Attached is a transcript of a recording of a conversation between Clarence Greathouse and Angelo J. Lonardo on May 12, 1984.

Investigation on 5/12/84 at Cleveland, Ohio File #CV 245A-58-47I by SA ROBERT A. FIATAL/rl Date dictated 5/17/84

CV245A58 5/12/84

Clarence Greathouse, Jerome Greathouse, Angelo J. Lonardo

C. GREATHOUSE: Uh the only thing uh . . .
(pause)

SA FIATAL: Take a look (unintelligible)

C. GREATHOUSE: I'm tell you what this, this son of a bitch is a lot bigger than I expected it.

SA CONNOLE: It's a lot bigger than I expected too. It's running.

MALE: Yeah I can see it running . . . it's running. I guess we'll have our fun.

MALE: Okay.

SA FIATAL: Okay (unintelligible). Uh, this is Special Agent Robert A. Fiatal with Special Agent Herbert Cohrs uh Bob Connole with the FBI, and Gary Rasoletti of the IRS, the date is 5/12/84. The time is approximately uh 1:18 p.m. Uh the individual wearing this body recorder is uh Clarence Greathouse and with the intent to record conversation with Angelo J. Lonardo.

C. GREATHOUSE: Now how do you know it works.

(laughter)

C. GREATHOUSE: Oh they gotta get a kick out of all my crazy ass laughs too.

(laughter)

C. GREATHOUSE: Whose got my key . . . you guys now I'm gonna come back here and make mad love tonight . . .

(laughter)

MALE: (unintelligible)

MALE: Huh?

SA CONNOLE: You got (unintelligible) I handed it back to you.

C. GREATHOUSE: If I've got it my mamma's the pope. See?

MALE: (Unintelligible).

C. GREATHOUSE: If there is any changes I hope you're able to pick it up on your radio . . .

SA CONNOLE: We can't pick it up (unintelligible) on that.

C. GREATHOUSE: Out here. Out there.

SA CONNOLE: (Unintelligible) call us.

C. GREATHOUSE: Hey where you parked?

SA CONNOLE: I'm parked out front (unintelligible) Well we'll walk out this way.

C. GREATHOUSE: We want to see if . . . the van out there right . . .

SA CONNOLE: Uh uh.

C. GREATHOUSE: So they'll be able to hear the conversation right.

SA CONNOLE: No (unintelligible) This is just a recorder, not a transmitter.

(unintelligible conversation)

(static)

C. GREATHOUSE: Oh, o'kay . . . Let me see I tell you one thing you're gonna have to get more sophisticated than this. Hm . . .

(unintelligible conversation)

C. GREATHOUSE: You've got it . . .

(STATIC)

(pause)

SA CONNOLE: (unintelligible) two eighty five today.

C. GREATHOUSE: Oh yeah.

SA CONNOLE: I'm gonna go right now.

C. GREATHOUSE: Beautiful.

SA CONNOLE: Yeah . . . I'll let you know when I get back (unintelligible).

C. GREATHOUSE: Let me see. I may not have a ride here (whistles).

(Music)

(Background Sounds)

C. GREATHOUSE: Hey, did you get ahold of him? Did you tell him I was around 150th by Laurel's Restaurant?

C. GREATHOUSE: He's not here. Oh, okay. 3:30 I will be . . . I have to come home and drop him off, o'kay . . . and then I'll be . . . as soon as I leave here. I'm going straight to where I'm supposed to be. Okay yeah bye.

(pause)

(Unintelligible background conversation)

MALE: (Unintelligible).

(Static—rustling sounds)

(Background music)

MALE: (Unintelligible) I know I know . . .

(Tapping Sound)

C. GREATHOUSE: Hi . . . page him again because I just paged him and I'm not getting an answer cuz time's running out on me here. Cuz I only got a half hour to reach my destination. All right bye.

(music in background)

MALE: Yeah.

(Background noise)

SA CONNOLE: O'kay.

C. GREATHOUSE: I called him 30 minutes ago and he's not here yet . . . here . . . come here I don't have my glasses and I can't see this damn number. Uh I called his wife up there . . . what's that number on there.

SA CONNOLE: 251-9755.

MALE: Can he receive any calls on this. No incoming messages o'kay.

SA CONNOLE: Hmm . . . I didn't know this?

C. GREATHOUSE: See I don't have my glasses. See some of em are marked no incoming messages you know.

C. GREATHOUSE: But I called his wife and told her to page him.

SA CONNOLE: (unintelligible) I would have figured he would stay in the area.

C. GREATHOUSE: Well he didn't know I was coming yet.

SA CONNOLE: Oh . . .

C. GREATHOUSE: See I had to page to tell him where to get me. Don't worry.

SA CONNOLE: Yeah.

C. GREATHOUSE: We'll get him . . . hi doll has he answered any of your calls yet, huh? He hasn't answered any of your calls . . . does he know it's by the County Inn . . . did you tell him by the Country Inn . . . oh shit . . . hmm.

SA CONNOLE: This might be him coming.

C. GREATHOUSE: Oh wait a minute . . . wait oh I see the bomb coming now . . . yeah . . . okay bye bye, yeah.

SA CONNOLE: Okay brother good luck.

C. GREATHOUSE: Hey man you know me.

SA CONNOLE: I know I gotta take care of you though (unintelligible). Give you some Irish luck.

(laughter)

C. GREATHOUSE: Hey wait a minute. Let me tip toe (unintelligible) hey you ain't getting off that easy . . . where's my receipt?

SA CONNOLE: Oh yeah we gotta . . . yeah hold on to that.

C. GREATHOUSE: No I'm gonna give it to you.

SA CONNOLE: Oh all right.

C. GREATHOUSE: If I can find it.

SA CONNOLE: Oh give it to me when we come back. . . Give it to him.

C. GREATHOUSE: Okay.

SA CONNOLE: Give it to Cohrs, or what's-his-name.

C. GREATHOUSE: Which one.

SA CONNOLE: Uh the little guy with the glasses.

C. GREATHOUSE: Yeah he seems . . . he's a serious little sucker.

SA CONNOLE: Yeah, yeah he's a lawyer give it to him . . . say here . . .

C. GREATHOUSE: He's a lawyer.

SA CONNOLE: Yeah.

C. GREATHOUSE: That's all right I'll blow his mind . . . cause he's cool. Where's my bomb at?

SA CONNOLE: (unintelligible)

C. GREATHOUSE: Over there he is.

SA CONNOLE: That fucking thing is nice (unintelligible).

C. GREATHOUSE: Oh I'll have to . . . I'll sell that before.

SA CONNOLE: Well at least Roselleti ain't gonna take it cuz uh . . .

C. GREATHOUSE: No, if they keep on taking. They can forget it.

SA CONNOLE: I think that's it . . . he's not going to do any more. Is it. Well we told him . . . we says hey look the guy's down we ain't putting the boots to him . . . I said you know he'll bail out of this fucking thing if that Roselleti is a decent guy.

C. GREATHOUSE: I'll go out of it . . . I'll quit it tomorrow.

SA CONNOLE: Yeah . . . go ahead . . . I'll talk to you about three, three thirty.

C. GREATHOUSE: I got you covered. (Unintelligible) I'm gonna drive my bomb. (static)

C. GREATHOUSE: (groans) Okay boss you know where.

(music in background)

C. GREATHOUSE: Know what I mean. I'll have to drop you off I'm coming back, uh where's my other room at oh route 42 and turn right down past the Coach House.

J. GREATHOUSE: Yeah.

C. GREATHOUSE: You got past that second red light or no?

J. GREATHOUSE: No it's, well I'm not sure it's about a mile, mile and a half down there on the left.

C. GREATHOUSE: and then past Howard Johnson's. What's the name of the place.

J. GREATHOUSE: Murphy's.

C. GREATHOUSE: Murphy's. Okay.

C. GREATHOUSE: No problem, let's see the best way to go is, go over here and get off at 130th.

J. GREATHOUSE: Yeah.
 C. GREATHOUSE: And go down Memphis.
 J. GREATHOUSE: Memphis?
 C. GREATHOUSE: Yeah.
 C. GREATHOUSE: Shoot. Go straight down Memphis to uh Broadview. Okay. (pause—music in background) Where you going?
 C. GREATHOUSE: Oh that way, yeah. What the hell am I thinking about. Like I was coming over here because we had to uh find a vacant parking lot you know to put this thing on. I didn't want to do it there on Denison because too many people know me.
 J. GREATHOUSE: I don't know what the hell you're talking about.
 C. GREATHOUSE: Well this thing that I put in my pocket, my cigarettes.
 J. GREATHOUSE: Oh.
 C. GREATHOUSE: I just come over for a short talk that's all. I don't ever want you to know nothing. You don't know you can't tell. (pause)
 (music in background)
 J. GREATHOUSE: (Unintelligible)
 C. GREATHOUSE: Yeah go on Bellaire, West 117th, no let's see down Bellaire.
 (music in background)
 J. GREATHOUSE: (Unintelligible)
 C. GREATHOUSE: Turn right. Just go straight through now to uh, to Ridge Road. I mean to uh . . .
 J. GREATHOUSE: Snow.
 C. GREATHOUSE: No.
 J. GREATHOUSE: Broadview.
 C. GREATHOUSE: To Broadview and up Broadview. I wanted to get there before he gets there. I want to see who's coming in with him.
 J. GREATHOUSE: Yeah.

C. GREATHOUSE: I don't completely trust him you know. That's the reason I keep you sitting in the car. In case there's any yoyos with him.
 J. GREATHOUSE: Flea market.
 C. GREATHOUSE: Yeah, they have a great flea market here. When you gonna see Jim on that stuff?
 J. GREATHOUSE: I don't know yet.
 C. GREATHOUSE: Let's see him and see what his game plan is okay? And then I'll take it from there. I'll come in the picture after a couple of trans ah . . . couple of small things.
 They got some pretty hanging baskets there.
 J. GREATHOUSE: Did you page mama?
 C. GREATHOUSE: Uh hm. Who?
 J. GREATHOUSE: My old lady.
 C. GREATHOUSE: I called her.
 J. GREATHOUSE: Two times. A second time . . .
 C. GREATHOUSE: Yeah but I couldn't uh they couldn't . . . I couldn't receive a call where I was at. I didn't.
 J. GREATHOUSE: I know.
 C. GREATHOUSE: I forgot my glasses. I forgot my glasses and then I had to take another friend of mine in there to read the telephone and I, I can't see (laughs) I mean put it over against that building I can read it. See when I dial a phone number my eyes are so bad sometimes when I dial a phone number, what I do is I I'm like a blind man I feel three, one . . . two, three, six, nine then zero. That's the way I dial my phone numbers. It's like a teletype thing you know. But I can see good over there. (Unintelligible) Two . . . eleven p.m. I can see anything as long as it's over there in that parking lot. But you put it up here I couldn't see it if the print was that big. I guess that comes with age huh? (laughter) and too much good pussy.
 J. GREATHOUSE: (Unintelligible).

C. GREATHOUSE: That's what my old lady . . . she asked me this morning, she said, want to make love. I said you got any money?

(laughter)

J. GREATHOUSE: I don't know about age but as wild as you was last night, ready to kick everybody's ass.

C. GREATHOUSE: Watch that. You watching . . . you mess my car up Jack and you, I'll hang you.

(Radio in background)

C. GREATHOUSE: I will literally hang you if you put a scratch on this thing. That kid get that kid to polish it tomorrow.

J. GREATHOUSE: (Unintelligible) he's gone.

C. GREATHOUSE: Huh?

J. GREATHOUSE: He's gone. Frank left.

C. GREATHOUSE: No not Frank, that big tall kid.

J. GREATHOUSE: Oh.

C. GREATHOUSE: What's his name.

J. GREATHOUSE: Keith.

C. GREATHOUSE: Keith.

He said he'd just polish the other one for fifteen dollars. I should polish it.

J. GREATHOUSE: Well we could stop right now and have it washed.

C. GREATHOUSE: No, we ain't got the time to. Let's go. In fact, keep on fucking around and I'll get behind the wheel and we'll get us a couple of tickets on the way. Not you . . . me.

(laughter)

MALE: (unintelligible)

J. GREATHOUSE: Shit man I'd have been better off to come up 71.

C. GREATHOUSE: Oh, no uh uh . . . we're almost down to Broadview now. I always like to get there before he gets there. I always like to see if there's any cars following him. That's your job.

J. GREATHOUSE: If I'd come up 71 I could have done a hundred or a hundred and ten.

C. GREATHOUSE: Yeah like I said I want to get there and I want to park in a position to where you can see all three . . . all three drivelines. and if there's any cars following him, I'm gonna park it where I can see you, and if there's any cars following him you give me a high sign. You know put . . . throw your hand up or something, just throw your hand up and I'll be watching you. Okay?

J. GREATHOUSE: Yeah.

C. GREATHOUSE: There's three, three, three drivelines coming into that place.

J. GREATHOUSE: Huh?

C. GREATHOUSE: There's three drivelines coming into that place. I hope they bring little Sammy over there. I want to talk to that little . . .

J. GREATHOUSE: Hmm.

C. GREATHOUSE: I didn't know there was a library there. I'm gonna let uh George Hudak live in that house. Free rent and then he'll pay me later, you know. George ain't never had a decent place to live.

J. GREATHOUSE: No that's for sure.

C. GREATHOUSE: You know. Nothing decent, no bathrooms . . . no nothing. So, I'm gonna let him live in that house.

(Radio in background)

J. GREATHOUSE: I tell you I'd have been better to come up '71 to 25th.

C. GREATHOUSE: Don't worry about it. This is 25th see this is a busy street. Plus the fact I needed to talk to you before we got there. See you would have got there too fast.

(laughter)

C. GREATHOUSE: Oh its a beautiful day (unintelligible) huh?

J. GREATHOUSE: Yeah.

C. GREATHOUSE: Hmmm pretty . . . I'm going out and be with her for the balance of the evening. Get somebody young.

J. GREATHOUSE: Thank you.

C. GREATHOUSE: Huh?

J. GREATHOUSE: I said thank you now I have to think of a cover for you so . . .

C. GREATHOUSE: Oh don't worry about that I'll give you a cover. Let me get rid of my phone books for now. Yeah don't need this extra pack of cigarettes right now. Anything else I don't need . . . remind me to get back out of there, okay?

J. GREATHOUSE: Okay.

C. GREATHOUSE: John, John Turocy. Did you get a hold of Cindy? What about Tammy. We need to be touching base with them.

J. GREATHOUSE: Uhh I don't really care too much about calling Cindy.

C. GREATHOUSE: I'll talk to um . . . I'll do the talking . . . find out when you can set me up a meeting, okay? Don't talk to nobody, just set my meetings up.

J. GREATHOUSE: You want me to set meetings up?

C. GREATHOUSE: That's all . . .

J. GREATHOUSE: With Cindy and Tammy.

C. GREATHOUSE: With Cindy, well one of em at a time. I don't want both of them there.

J. GREATHOUSE: Alright.

C. GREATHOUSE: I want my meeting set up with Eric McDonald too.

J. GREATHOUSE: No problem.

C. GREATHOUSE: That's all you got to do is just set up meetings I want to go see Tommy Towner. Okay?

J. GREATHOUSE: You want to see him too.

C. GREATHOUSE: Damn right I want to see him.

J. GREATHOUSE: All right.

C. GREATHOUSE: It's time I talked to these people, they listen to me when I talk to them. Uh, okay. Uh, okay, just about forgot something . . . let me put my bill-

fold in the glove compartment too but I ain't been carrying my billfold when I been seeing him. (sighs) (sings along with radio). What's that a Mercedes?

J. GREATHOUSE: Huh?

C. GREATHOUSE: Mercedes. (singing with radio) Oh, that's a beauty (unintelligible). It's right at the top of this hill . . . yeah . . . right at the top of this hill and turn right . . . Let's see . . . park in front of the window right there, okay.

J. GREATHOUSE: All right.

C. GREATHOUSE: Yeah back it in . . . uh let's see you can sit here. Park right here . . . cuz I'm gonna try to sit on that corner over there? Okay.

J. GREATHOUSE: Yep.

C. GREATHOUSE: It's ten till two, I'm gonna in and order some soup.

J. GREATHOUSE: I can't see a damn thing for the tractor.

C. GREATHOUSE: Well if he's what what truck?

J. GREATHOUSE: That truck right there.

C. GREATHOUSE: Well sit over there then.

J. GREATHOUSE: Alright.

C. GREATHOUSE: Okay you want to, well if he's not here yet come in and have some soup with me until he arrives and then you can leave.

J. GREATHOUSE: Okay.

(door slams—banging noises—enters restaurant)

(background conversation)

C. GREATHOUSE: Hi, where's uh, your smoking and non smoking, smoking I want.

FEMALE: Not smoking (unintelligible) that's non-smoking.

C. GREATHOUSE: Okay, is it okay, to sit here.

FEMALE: Sure.

C. GREATHOUSE: I'm expecting some more people.

FEMALE: Okay.

C. GREATHOUSE: Okay thank you. Let me grab one of 'em now, bring me some soup.

(background noises)

C. GREATHOUSE: Hello boss. Oh, it's good to see you. It's been a little while.

LONARDO: Yeah.

C. GREATHOUSE: I've been getting plenty of rest though.

LONARDO: Huh?

C. GREATHOUSE: I've been getting plenty of rest. Oh, okay honey.

WAITRESS: Coffee here.

LONARDO: Give me some, you got some kind of diet pop.

WAITRESS: Yeah, uh hm. Diet Coke.

LONARDO: Whatever.

C. GREATHOUSE: I'll have coke and a cup of soup, little bit hungry.

WAITRESS: I'll be right back.

C. GREATHOUSE: Okay. Mama had to go out to the campground today so . . .

LONARDO: Where.

C. GREATHOUSE: Out there.

LONARDO: The country?

C. GREATHOUSE: Yeah, she gonna check on some stuff cuz I'm not allowed out of the county.

LONARDO: Uh huh.

C. GREATHOUSE: So she's taking care of everything for me.

LONARDO: Good.

C. GREATHOUSE: Trying to anyway.

LONARDO: Did any of the guys come in town?

C. GREATHOUSE: No, no uh this week Wednesday.

LONARDO: Talked to the people.

C. GREATHOUSE: Yeah what they say?

LONARDO: Well they're interested.

C. GREATHOUSE: Okay, do they want to wait till it's here.

LONARDO: Huh?

C. GREATHOUSE: Do they want to wait till it's here.

LONARDO: Oh yeah. How else could we do it.

C. GREATHOUSE: They don't want to put nothing up front?

LONARDO: Huh?

C. GREATHOUSE: They don't want to put nothing up front?

LONARDO: The way we'll do it . . . is the way we did with the one fellow . . . (to waitress) take it (unintelligible)

C. GREATHOUSE: Oh okay.

LONARDO: That's okay.

C. GREATHOUSE: Okay.

LONARDO: Right there.

C. GREATHOUSE: Okay.

LONARDO: What do you think?

C. GREATHOUSE: Okay.

WAITRESS: That's a Diet Coke and what did you want sir?

C. GREATHOUSE: A Coke please.

WAITRESS: Coke also, regular or diet?

C. GREATHOUSE: Regular.

LONARDO: I'll have a diet myself.

C. GREATHOUSE: He needs a diet.

(laughs)

LONARDO: I do I've gained twenty pounds.

C. GREATHOUSE: Have you really?

LONARDO: Yeah.

LONARDO: Yeah. Ain't been doing nothing. All I do is go to P.M. every night and eat.

C. GREATHOUSE: You look a lot better than the last time.

LONARDO: Yeah well I feel better I just I was at the Clinic all week.

C. GREATHOUSE: You move with your girl?

LONARDO: Huh?

C. GREATHOUSE: You move in with your girl yet?

LONARDO: No, no.

C. GREATHOUSE: No?

LONARDO: I don't know if I want to.

C. GREATHOUSE: Oh, okay.

LONARDO: Huh? You know I gotta make up my mind anyway I was at the Clinic all week that's why you haven't heard from me.

C. GREATHOUSE: What uh?

LONARDO: Well it wouldn't have done any good anyway.

(Unintelligible conversation)

LONARDO: (Unintelligible) tests.

C. GREATHOUSE: Oh, okay. You was there for a week.

LONARDO: Well out patient.

C. GREATHOUSE: You go thee all day long. How is it going?

LONARDO: So far the cancer hasn't gotten any worse and they're amazed . . . they really are.

C. GREATHOUSE: Yeah . . . okay . . . well so am I.

LONARDO: I hope they stay amazed.

C. GREATHOUSE: Yeah.

LONARDO: They cut a mole off of my back. I don't know if I told you that.

C. GREATHOUSE: Yeah you was telling me about that.

LONARDO: But uh now they took some more blood tests . . . then they tested my kidneys and everything that's o'kay. So I've been getting some good reports you know.

C. GREATHOUSE: Yeah.

LONARDO: (unintelligible) could change anyday but . . .

C. GREATHOUSE: I hope it don't

LONARDO: (untintelligible) all we can do is treat it you know they treat it with some kind of medicine. I don't know what.

C. GREATHOUSE: That's about as sloppy as you can do . . . half the soup is in my saucer.

LONARDO: Yeah see and what they're doing is trying to keep me away from chemotherapy see.

C. GREATHOUSE: Hmm . . . I need a valium.

LONARDO: See because they said that's not a pleasant thing.

C. GREATHOUSE: Yeah.

LONARDO: So what the hell I'm going to the best there is anywhere in the world.

C. GREATHOUSE: Yeah.

LONARDO: The Clinic is

C. GREATHOUSE: Yeah the Clinic it is.

LONARDO: So I feel good about it.

C. GREATHOUSE: I was out last night and had some beers. I tangled with a guy about 380 pounds. About 380 pounds, I smacked him last night, oh my God. Gonna get killed.

LONARDO: You better watch who you smacking.

C. GREATHOUSE: I know.

LONARDO: That's two people.

C. GREATHOUSE: This guy looked like four. He looked like uh big Ron. That's what he looked like, I said oh my God what have I done.

LONARDO: No I tried I (unintelligible) grabbed ahold of him.

C. GREATHOUSE: Oh did you get ahoid of him?

LONARDO: Miller.

C. GREATHOUSE: Okay.

LONARDO: And as a matter of fact he's breaking away from that other asshole.

C. GREATHOUSE: Okay.

LONARDO: See cuz that's the one, I'm only telling you this.

C. GREATHOUSE: Okay.

LONARDO: That's the one that talked him into going along with him.

C. GREATHOUSE: Who Sam?

LONARDO: You know yeah, cuz Miller's a good kid.

C. GREATHOUSE: Yeah, I know he is.

LONARDO: The other one's a real, a real asshole.

C. GREATHOUSE: Well that's the one I want. If you can get me his phone number.

LONARDO: I've sent for him four times.

C. GREATHOUSE: Yeah.

LONARDO: And he hasn't called.

C. GREATHOUSE: You get me his phone number.

LONARDO: See I even went to his wedding. He had the balls to invite me but to make everybody in town.

C. GREATHOUSE: Oh that one, okay.

LONARDO: To make everybody in town feel as though (unintelligible) okay.

C. GREATHOUSE: Yeah.

LONARDO: I went.

C. GREATHOUSE: Yeah.

LONARDO: I didn't stay but, I stayed.

C. GREATHOUSE: Yeah, yeah.

LONARDO: An hour and then I left.

C. GREATHOUSE: To send some messages.

LONARDO: This way you know somebody hey geez we're friends.

C. GREATHOUSE: Yeah.

LONARDO: He could never be my friend never.

C. GREATHOUSE: Mine either. What about the other little skinny one?

LONARDO: Huh?

C. GREATHOUSE: Sam, Sammy.

LONARDO: He's all right.

C. GREATHOUSE: Is he.

LONARDO: Yeah.

C. GREATHOUSE: Well how come he owes me so much money?

LONARDO: As a matter of fact and you know I believe this kid. He never got what he was supposed to get either.

C. GREATHOUSE: You're kidding?

LONARDO: He got fucked.

C. GREATHOUSE: And I got fucked.

LONARDO: Well three of us, alright, two of us, mostly because you know Sammy didn't put anything up.

C. GREATHOUSE: Is he saying he's not gonna give us our money?

LONARDO: That's that's right.

C. GREATHOUSE: Well it ain't right either.

LONARDO: No, no, no, it ain't right that's what I'm saying is right but you're right.

WAITRESS: (unintelligible)

C. GREATHOUSE: (Unintelligible)

LONARDO: We will work this deal . . . cuz I hate his fucking guts.

C. GREATHOUSE: Give him to me.

LONARDO: See because they owe me five "O" more, what the fuck.

C. GREATHOUSE: They owe you five, six and they owe me . . .

LONARDO: They owe me seven, 20 be almost, six, "O".

C. GREATHOUSE: Six, "O", they owe me no five, 8 they owe me, see.

LONARDO: They owe me four, seven, plus that 13 five (unintelligible)

C. GREATHOUSE: That's right, that's right.

LONARDO: Add that to it.

C. GREATHOUSE: Yeah.

LONARDO: See four seven's what yeah I just forgot the 13, I mean I forgot it then but I ain't gonna forget it now. (unintelligible conversation)

C. GREATHOUSE: You want to know how much money I got and I'm God take my children's life I got \$40.00

LONARDO: Well you got two to one over me I got about 20, 25.

C. GREATHOUSE: Okay. My wife went out today to try and get some money.

LONARDO: Yeah.

C. GREATHOUSE: But I got \$40.00 and I got (unintelligible)

LONARDO: (unintelligible) four to five weeks to be able to touch something.

C. GREATHOUSE: We'll uh this week.

LONARDO: Yeah.

C. GREATHOUSE: Are they ready this week?

LONARDO: Who? I'm talking about you said you may, you could (unintelligible) put your hands on some cash.

C. GREATHOUSE: Yeah I will.

LONARDO: Can't get close to.

C. GREATHOUSE: I will.

LONARDO: But this coming week I'll try to set some people up.

C. GREATHOUSE: Yeah.

LONARDO: See and they don't know who I'm talking to, I don't want them to know.

C. GREATHOUSE: No, I don't want nobody to.

LONARDO: There's a bad word out uh Ronny has caused a lot of people uh that don't know me personally those that know me personally tell me tell him to get fucked.

C. GREATHOUSE: Yeah.

LONARDO: But he's put out the word.

WAITRESS: Can I get you anything else (unintelligible)

C. GREATHOUSE: Pardon?

WAITRESS: Anything else today.

C. GREATHOUSE: No that's okay honey.

LONARDO: Do you believe that.

C. GREATHOUSE: I want Ronnie.

LONARDO: So you know my people called me in (unintelligible).

C. GREATHOUSE: Yeah.

LONARDO: And told me uh what the fuck's going on I thought (unintelligible) I said I ain't doing nothing and uh what did you have to do with this guy. The guy's a friend of mine a customer comes in the bar you know (unintelligible).

C. GREATHOUSE: Yeah don't tell nobody nothing about me.

LONARDO: So I said well what's this word that this asshole's been passing around.

C. GREATHOUSE: Okay.

LONARDO: I say well you know me. You answer it. They say well we know the answer.

C. GREATHOUSE: Yeah, goddamn. Well just let me know where Ronny's at okay.

LONARDO: I gotta find out.

C. GREATHOUSE: Well you find out where he's at and then give it to me. Uh are we going to do, uh are we going to do anything with Miller anymore. Try to get our money, that's, I'm asking you.

LONARDO: If he comes up with something.

C. GREATHOUSE: He's got to come up with something before we even start.

LONARDO: No, uh let me talk to him this week.

C. GREATHOUSE: Okay we'll we'll do something with him but I want half . . . I want half up front everything I do with him.

LONARDO: Right.

C. GREATHOUSE: I want half and the rest of em I want cash okay . . . now I will roll something for Wednesday or Thursday is that too soon?

C. GREATHOUSE: I've got to make some money.

LONARDO: Well let me.

C. GREATHOUSE: Turocy all over me.

LONARDO: (Unintelligible) . . . try to set it up.

C. GREATHOUSE: Turocy all over my ass.

LONARDO: Huh?

C. GREATHOUSE: Turocy all over my ass. I've only paid them thirty five hundred dollars.

LONARDO: Uh ha.

C. GREATHOUSE: Out of fifteen thousand.

LONARDO: He shouldn't charge you fifteen, that's wrong.

C. GREATHOUSE: He charged me the whole thing.

LONARDO: He's wrong.

C. GREATHOUSE: Well he did.

LONARDO: Cuz see he pays two to three points.

C. GREATHOUSE: Yeah.

LONARDO: That's all he pays. Not over three and not less than two, I was in that business.

C. GREATHOUSE: Well then he charged me the whole thing.

LONARDO: Fine, you know uh but he had to pay forty five hundred. That's what it cost him. In other words when you give him forty five hundred he's even.

C. GREATHOUSE: Another thousand and he's even.

LONARDO: He's even.

C. GREATHOUSE: And everything else is free.

LONARDO: And everything over that is profit, so don't let him (unintelligible).

C. GREATHOUSE: I ought to go down on the (unintelligible).

LONARDO: When you, when you give him the other thousand okay, he's even.

C. GREATHOUSE: That's what I'm gonna give him then.

LONARDO: He's even.

C. GREATHOUSE: I'm gonna give him (unintelligible).

LONARDO: And tell him he's gotta wait for the rest.

C. GREATHOUSE: That's what I'm gonna do, exactly what I'm gonna do.

LONARDO: He's even, unless you want to give him another thousand profit.

C. GREATHOUSE: And if he wants, if he wants to cancel my bond, cancel it then.

LONARDO: He ain't gonna fucking cancel it. Cuz know he's even right now his only shot, he cancels the bond he get nothing if he doesn't cancel the bond now he's got a shot to get his money from you.

C. GREATHOUSE: Oh, okay.

LONARDO: He ain't that dumb is he, if he's that dumb . . .

C. GREATHOUSE: He better not be.

LONARDO: Now tell him the truth, look I understand the bond business John you're entitled to make money, you don't have to tell him where it came from.

C. GREATHOUSE: Yeah.

LONARDO: Just tell him you're entitled to make money. I know you guys pay anywhere from two to three points, okay and you're entitled to make money. I don't appreciate you charging me ten, you should have charged me maybe anywhere from five to seven. Now I'm gonna get your money where you're even plus a little profit your gonna have to wait for the rest because hey I only called you, there's other bondsman . . . there's other bondsman that will wait for their money.

C. GREATHOUSE: Yeah just like Ike Goldstein told me. He said I'll go your bond anytime and wait for it.

LONARDO: Tell tell him there's other people that told you that they'll wait for their money. If he wants to wait let him wait as long as he's even what's he got to yell about.

C. GREATHOUSE: He ain't got nothing to lose and nothing to yell about.

LONARDO: Right.

C. GREATHOUSE: That's right. Well see I didn't look at it like that, I just looked at it, I owe the man.

LONARDO: And if he knows I'm telling you that.
 C. GREATHOUSE: You know, you know I pay my debts.

LONARDO: You know. Cuz I don't want him, cuz he doesn't know...

C. GREATHOUSE: No I don't tell him nothing about you.

LONARDO: ...you and me anyways.

C. GREATHOUSE: No.

LONARDO: I used to work through my cousin he'll think uh that something happened through there see, but that's the truth.

C. GREATHOUSE: This soup looks like puke.

LONARDO: I wouldn't (unintelligible).

C. GREATHOUSE: I'm not I'm not gonna, lookee here.

LONARDO: Uhh but see...

C. GREATHOUSE: Where'd you get that?

LONARDO: You don't have any of that thing on hand do you? No?

C. GREATHOUSE: No, but I can get you some.

LONARDO: Uh no don't go through the trouble.

C. GREATHOUSE: No.

LONARDO: I just...

C. GREATHOUSE: Wednesday or Thursday.

LONARDO: Huh?

C. GREATHOUSE: Wednesday or Thursday we'll have the best.

LONARDO: I can wait.

C. GREATHOUSE: Okay.

LONARDO: No big deal.

C. GREATHOUSE: How's your lady doing anyway?

LONARDO: Been working.

C. GREATHOUSE: Is she working now.

LONARDO: Yeah.

C. GREATHOUSE: What she doing?

LONARDO: You mean Jordan?

C. GREATHOUSE: Yeah.

LONARDO: She's modeling.

C. GREATHOUSE: I didn't know she had a job.
 LONARDO: She always been modeling.

C. GREATHOUSE: I thought you said she was out of work there for a long time.

LONARDO: Oh yeah for a long time she didn't work uh for quite a bit but that's her fault, because she gets lazy.

C. GREATHOUSE: What about her girl?

LONARDO: Huh?

C. GREATHOUSE: What about her little girl?

LONARDO: Still uh working on that I got some United States senator working on it now.

C. GREATHOUSE: Hmm.

LONARDO: I don't know. Hope they can do her good.

C. GREATHOUSE: Well you never know, fly somebody over here. Karim and I are ready to go.

LONARDO: Well what we're gonna try to do this way see if it works. If it doesn't work we'll try something else.

C. GREATHOUSE: Yeah. Okay well I'll get rolling, I'll get moving for Wednesday or Thursday of this week.

LONARDO: Alright and I'll, I'll start calling.

C. GREATHOUSE: Because people will trust me til it's here.

LONARDO: Huh?

C. GREATHOUSE: The people will trust me til it's here but we gotta have enough going on to pay the people at least the cost. The cost will be 21 to 25.

LONARDO: 21 to 25.

C. GREATHOUSE: Whatever it takes.

LONARDO: I just missed this one guy. He just brought up this.

C. GREATHOUSE: You're kidding?

LONARDO: I'm serious.

C. GREATHOUSE: When?

LONARDO: Uh just a couple of days, see it took me two, three days to get in touch with him.

C. GREATHOUSE: Oh shit.

LONARDO: And then uh.

C. GREATHOUSE: What are they paying.

LONARDO: He come to see me yesterday and he says geez I'm leaving tomorrow which is today. He says I already made the deal I gotta go pick it up.

C. GREATHOUSE: Shit.

LONARDO: Yeah. That's what he's picking up.

C. GREATHOUSE: What's he paying (unintelligible)

LONARDO: (unintelligible) oh yes he did tell me I'm sorry.

C. GREATHOUSE: Find out what they're paying.

LONARDO: I think he said, it was a little under 40.

C. GREATHOUSE: Under 40?

LONARDO: Yeah.

C. GREATHOUSE: (unintelligible)

LONARDO: Huh?

C. GREATHOUSE: They could have made.

LONARDO: I'm just saying under.

C. GREATHOUSE: (sighs)

LONARDO: I think he' paying like 35.

C. GREATHOUSE: We we can sell it for thirty.

LONARDO: (unintelligible)

C. GREATHOUSE: As long as it's like this okay just pow, pow, pow, pow.

LONARDO: Yeah.

C. GREATHOUSE: That's the way I want it really I don't want no, I don't want nothing smaller than a quarter key.

LONARDO: Right.

C. GREATHOUSE: Okay, I don't want none of these little petty ass people.

LONARDO: Alright.

C. GREATHOUSE: If I get them forget it, I don't want nothing to do with 'em. They jam up me up too much.

LONARDO: See what I'll do, I'll (unintelligible) you'll know what I got it I'll show it to you if you want.

C. GREATHOUSE: Well as long as you told me you got the money.

LONARDO: I'll tell you where to drop it.

C. GREATHOUSE: Okay.

LONARDO: Let them go in there.

C. GREATHOUSE: Do their thing but I'm not . . .

LONARDO: Do their thing.

C. GREATHOUSE: I'm not I'm not going into offices.

LONARDO: Neither am I.

C. GREATHOUSE: I'll go here and I'll drop this to 'em and then they can walk it to the office they want to. I'm not sitting in an office like before.

LONARDO: Not me.

C. GREATHOUSE: Not me either. There's a lot of them people I don't trust . . .

(background noises, talking)

You know it. And I'm gonna use every precaution I can from here on out.

LONARDO: See I had to pass that deal. I had to come up with the money remember that deal I told you that guy . . . sense.

C. GREATHOUSE: The sense yeah. Yeah. Are we gonna be able to get any of that stuff?

LONARDO: Well see I had to come up with some money and I couldn't do it. I had to come up with two "O".

C. GREATHOUSE: Yeah I know.

LONARDO: And cuz he wanted me to help him you know.

C. GREATHOUSE: Uh huh.

LONARDO: And uh (unintelligible) my son right now. Buying a house and I felt so bad askin' me for ten and I can't give it to him. Ten.

C. GREATHOUSE: Look at me.

LONARDO: Ten.

C. GREATHOUSE: I ain't been this broke in my life. Uh.

LONARDO: Like the one fucking attorney so far he's paid 167 and he hasn't even gone to court.

C. GREATHOUSE: You're kidding?

LONARDO: An appeal attorney. One, six, seven.

C. GREATHOUSE: What about uh . . .

LONARDO: And now he's got Willis working on this next case.

C. GREATHOUSE: You've gotta be kidding. You still like him?

LONARDO: Well he's alright, I can handle him.

C. GREATHOUSE: Okay.

LONARDO: He doesn't know anything (unintelligible)

C. GREATHOUSE: I don't even want Willis to know my name.

LONARDO: Huh?

C. GREATHOUSE: I don't even want Willis to know my name. He's part of the reason all this gossip's going around. And then when them two detectives . . .

LONARDO: Well that's because that guy from Michigan told him.

C. GREATHOUSE: Said

LONARDO: Whoever.

C. GREATHOUSE: Well the truth, what happened was that uh two detectives got on the stand and I asked my attorney about that and he said well if they can't get you to work with them they get on the stand and try to splatter your name on the streets.

LONARDO: Well, you guys should try to suppress that.

C. GREATHOUSE: We are, we are.

LONARDO: See because that's how you know this is all over town.

C. GREATHOUSE: Uh hm. But we are going to.

LONARDO: And that, that asshole used it to his advantage by telling people.

C. GREATHOUSE: That's okay, he's mine.

LONARDO: He's an asshole.

C. GREATHOUSE: You just get me his number and address and he's mine. I'm gonna go knock on his door with his new bride and everything else, I tell you something, you don't know how mad I am. You take a hungry hillbilly he gets he gets pretty violent.

LONARDO: (unintelligible)

C. GREATHOUSE: Well get a hungry hillbilly he gets pretty violent (pause) hey is uh Wednesday or Thursday good enough?

LONARDO: Oh yeah because then I got to hold these people all over.

C. GREATHOUSE: Oh so do I, so do I.

LONARDO: Yeah.

C. GREATHOUSE: Okay I'll order up for Thursday, okay and then we'll just break it down from here but I can only order one at a time right now. You know after a couple of times then I can get what we want.

LONARDO: What's it different people?

C. GREATHOUSE: No it's the same people.

LONARDO: Same guy?

C. GREATHOUSE: Yeah. What about uh, I uh, I was thinking about this yesterday. What about Richard, what is it Richard, what's the guy's name, the attorney down there? The attorney in Ft. Lauderdale.

LONARDO: I forgot.

C. GREATHOUSE: (laughs) see if you can find out I have too. I thought it was Richard, something like that.

LONARDO: I gave you the card.

C. GREATHOUSE: Yeah I know it, well you know hey (unintelligible) no I was just gonna talk to him that's all see I'm gonna look for a different quality.

LONARDO: Oh a different amount.

C. GREATHOUSE: Different qualities.

LONARDO: Uh huh huh?

C. GREATHOUSE: Quality.

LONARDO: Yeah.

C. GREATHOUSE: Come in here with some of the stuff that I was getting, you can forget it with them people.

LONARDO: (Unintelligible) more competitive.
 LONARDO: Well your people get the best.
 C. GREATHOUSE: Yeah oh yeah but the best ain't always the best.
 LONARDO: Oh I see.
 C. GREATHOUSE: If you know what I mean.
 LONARDO: Yeah.
 C. GREATHOUSE: You remember I got some of it that's little powdery (unintelligible) they don't want that stuff.
 LONARDO: Huh.
 C. GREATHOUSE: They don't want that stuff up here. I'm gonna look for a couple new people and see what kind of prices they can give me.
 LONARDO: Alright.
 C. GREATHOUSE: They're people I already know, you know that have been there before.
 LONARDO: Yeah, yeah, you don't want to meet no new people.
 C. GREATHOUSE: No, no I don't I don't even want to meet no new girlfriends.
 (laughter)
 LONARDO: I don't either. (pause)
 C. GREATHOUSE: Well my girlfriend and the kids they were sleeping in the car for the past three days and I didn't even know it. I didn't have no money to give to them and I went and borrowed a \$110.00 last night, went and got 'em a room for a week until I can help, see, see what's going on. (sighs) and don't think that don't get on your nerves, you know it does.
 C. GREATHOUSE: Where'd Jerome go? I don't see him in the car.
 LONARDO: What?
 C. GREATHOUSE: What's Jerome doing? Oh he's in the car.
 LONARDO: I saw him as I walked in.
 C. GREATHOUSE: Yeah, he was gonna come in and have some soup, you weren't here but I don't want him

to hear nothing, I don't want Michael to hear nothing. I'm doing everything myself.
 LONARDO: How's he doing down there?
 C. GREATHOUSE: Huh?
 LONARDO: Michael.
 C. GREATHOUSE: He get's out next week.
 LONARDO: Huh?
 C. GREATHOUSE: Next week.
 He's been in 30 some days.
 LONARDO: Huh?
 C. GREATHOUSE: He's been in 30 some days.
 LONARDO: Is he okay?
 C. GREATHOUSE: Oh yeah. Yeah he's he's tight, keeping his mouth shut. In fact he uh, he ordered that nobody, his attorneys ordered that nobody sees him or talks to him without his presence. He's he's a lot tighter than I expected. My brother Forest was the one that really messed me up.
 LONARDO: Who?
 C. GREATHOUSE: Forest.
 LONARDO: How's uh Peggy.
 C. GREATHOUSE: Oh she's fine.
 LONARDO: I haven't even tried calling her you know.
 C. GREATHOUSE: Oh you can call her.
 LONARDO: Yeah but if the line's been tapped . . .
 C. GREATHOUSE: Well a pay phone.
 LONARDO: Uhh . . .
 C. GREATHOUSE: Her phone's only a week old and I know it's not been tapped and it's in a fictitious name so . . . You got no problems there, plus if they hear you you ain't going to talk to her about nothing no way.
 LONARDO: Huh?
 C. GREATHOUSE: You ain't gonna talk to her about nothing.
 LONARDO: No.
 C. GREATHOUSE: In fact she asked me what, she asked me, says let's go down to dinner. I said no honey I said you can go down for dinner but not me.

LONARDO: Oh tell her to come in anytime she wants.
 C. GREATHOUSE: Yeah I told her, she wanted to bring her father down for dinner.

LONARDO: Yeah.

C. GREATHOUSE: No we we got this case against me beat with hands down, not worried about that.

LONARDO: Uh hm.

C. GREATHOUSE: As long as they don't come out with no new indictments. I don't know one way or the other.

LONARDO: Well...

C. GREATHOUSE: But as of right now there is none I know that but uh, they shafted me good. A fourth degree felony, a hundred thousand dollars, can you believe it.

LONARDO: That don't even make sense.

C. GREATHOUSE: It didn't make sense to my attorney it didn't make sense to me, it didn't make sense.

LONARDO: Can't you get it lowered?

C. GREATHOUSE: No this is the best, well they had it cash, aa hundred thousand cash, and then they got hundred surety. That's is low as they would go. They wanted me bad, real bad. So I just walked in and give to him, told 'em now they can quit looking but what's the damn sense in running and hiding they gonna just keep on raiding as long as you hide, they'll raid, but I'm gonna do everything myself and I'm gonna make damn sure there ain't no slip-ups every day, I'm not letting Michael deliver, I'm not letting Jerome deliver. The only thing that you'll ever hear from them is setting up my meetings (unintelligible) That's it.

LONARDO: You'll do it yourself?

C. GREATHOUSE: I'm doing everything.

LONARDO: Don't you think they'll follow you.

C. GREATHOUSE: (sighs) I'm gonna put it this way, I'm gonna make damn sure they don't. Cuz I'm not moving when somebody asks me to, I'm moving when I want to.

C. GREATHOUSE: If you know what I mean, I just don't trust these kids. I don't trust these kids and the way they do things.

LONARDO: They get careless.

C. GREATHOUSE: Yes they do, in fact that's one reason that I'm in the trouble I'm in now. Kids, not me it was them.

LONARDO: Ohh.

C. GREATHOUSE: I think I can work it out. We'll see when the time comes if I have to use em I will, but if I think it's unsafe for me then I'll use them okay. And if you think that I should use one of em then I'll use one of em.

LONARDO: Oh I don't know I'm just...

C. GREATHOUSE: Well I'm I'm gonna have to use my own mind in this. I can do it either way.

LONARDO: Huh?

C. GREATHOUSE: I can do it either way.

LONARDO: Alright.

C. GREATHOUSE: Whatever you think is (unintelligible) you think it's best the other way we'll do it, you think it's best that I do it then we'll do it that way.

LONARDO: Alright.

C. GREATHOUSE: I'm just gonna go ahead and get on the box and order for Thursday, I'm gonna spend the evening at the campground with the old lady. (unintelligible).

C. GREATHOUSE: I certainly will and then I'll her her to come down for dinner.

LONARDO: Yeah do it, then I'll talk to you.

C. GREATHOUSE: Okay, I'll catch you later oh that's right you gotta get that...

WAITRESS: No dessert today huh, nothing?

C. GREATHOUSE: No dessert today honey, no dessert. I'll get the bill.

WAITRESS: (unintelligible) this for you then.

C. GREATHOUSE: Please.

WAITRESS: (unintelligible)

(Unintelligible conversation)

LONARDO: Three pennies.
 WAITRESS: Uh huh.
 C. GREATHOUSE: (unintelligible)
 LONARDO: Do you have three pennies?
 C. GREATHOUSE: No, I got (unintelligible)
 WAITRESS: That's out of five dollars.
 LONARDO: That's alright.
 C. GREATHOUSE: Don't call me till . . .
 LONARDO: Huh?
 C. GREATHOUSE: Call me Thursday.
 LONARDO: Thursday?
 C. GREATHOUSE: Thursday morning.
 LONARDO: I'll call you (unintelligible) either just before lunch or right after.
 C. GREATHOUSE: O'kay by then I'll be ready.
 C. GREATHOUSE: All right I'll see you.
 LONARDO: Bye . . . bye
 (Static)
 C. GREATHOUSE: No you don't get the pleasure of driving back.
 J. GREATHOUSE: Huh?
 C. GREATHOUSE: You don't get the pleasure of driving back (laughs) you wanna be seen in that big pretty bomb huh?
 J. GREATHOUSE: Come on let me drive.
 C. GREATHOUSE: Uh uh, uh uh. It's gonna be my pleasure.
 (Starts Car Engine)
 C. GREATHOUSE: O'kay I have to take you home and get my glasses, o'kay. Let's see what's the best way . . . straight down Broadview to 71.
 J. GREATHOUSE: Uhh . . .
 C. GREATHOUSE: What time is it?
 J. GREATHOUSE: Snow Road uh down Broadview to uh Ridge . . . wait a minute . . . yeah down Broadview to Ridge.

C. GREATHOUSE: O'kay . . . you . . .
 (Background Sounds)
 C. GREATHOUSE: o'kay (unintelligible)
 (Turns radio on . . . music in background)
 J. GREATHOUSE: (unintelligible) go down Brookpark to get to Ridge.
 C. GREATHOUSE: To get to where.
 J. GREATHOUSE: To get to Ridge Road (unintelligible) make a left here.
 C. GREATHOUSE: Make a left?
 J. GREATHOUSE: Yeah.
 C. GREATHOUSE: Are you sure?
 J. GREATHOUSE: Yep.
 C. GREATHOUSE: (Unintelligible oh you want to go down Ridge.
 J. GREATHOUSE: You wanna go, take me home right.
 C. GREATHOUSE: Yeah.
 J. GREATHOUSE: Well then you go down Ridge, I live right off of there.
 C. GREATHOUSE: Okay. Yeah, I need you to go in the house and get my glasses for me. I'm sure man I'm sure I saw them things I mean I had them, cause I'm gonna be gone for the rest of the day.
 (pause) (music in background)
 C. GREATHOUSE: What's that.
 J. GREATHOUSE: (Unintelligible). Oh, that's right.
 C. GREATHOUSE: I like this song.
 (music in background)
 C. GREATHOUSE: Here put these keys on my ring (unintelligible).
 (coughing in background)
 (music in background)

J. GREATHOUSE: Where do you want me to start making them appointments for you.

C. GREATHOUSE: Uhh, Monday, Tuesday, I wanna rest.

J. GREATHOUSE: (unintelligible) Monday or Tuesday or just wait till Monday (unintelligible).

C. GREATHOUSE: Wait till Monday or Tuesday to make 'em, okay. Meanwhile I want you to get a hold of Costanzo and I want some money, I don't care if it's a hundred dollars, okay? Tell him tell him I got it rolling for Thursday. Tell him I got things and they're rolling for Thursday and by God I need I want some money. Tell him I don't have money for groceries and look go over there and get me a couple hundred dollars or whatever, okay.

J. GREATHOUSE: Alright, I'll do what I can.

C. GREATHOUSE: No we're gonna get it, if you don't, I will.

J. GREATHOUSE: Well I'll do what I can.

C. GREATHOUSE: You do what you can and if he don't give it to you then he's gonna talk to me, before Thursday too, and tell him to get his money and everything ready for Thursday, for Thursday delivery. Tell him nobody can have more than a quarter key okay?

J. GREATHOUSE: You have to pay for it up front though right?

C. GREATHOUSE: Uh at least uh I want at least 8000 up front on a quarter key but I'm selling him quarter keys for 12,500 ain't I or 13,000? What am I selling quarter keys for there?

J. GREATHOUSE: (uh) Uh, you know I think 12,500 or 13,000 (unintelligible) one of the two.

C. GREATHOUSE: Twelve thousand . . . twelve five I think . . . 12 and 12 is 24, 48 (unintelligible) yeah that's 50,000 a key, okay. I don't want no small buyers on this first key if I can help it, okay?

(Continuous music in background)

C. GREATHOUSE: That's a pretty Pontiac, huh?

J. GREATHOUSE: (Unintelligible).

C. GREATHOUSE: Is this Ridge Road right here. Yeah, that's Ridge huh? That's a Pontiac . . . ain't it?

J. GREATHOUSE: (Unintelligible).

C. GREATHOUSE: Convertible . . . Coupe DeVille.

J. GREATHOUSE: Grandville.

C. GREATHOUSE: Or Grandville, yeah. That is pretty. (unintelligible made me nervous. God damn sick whore right now. I drank a coup of fucking coffee. It couldn't have been decaffinated . . . I drink one cup of coffee and it tears my God damn nerves all to pieces.

J. GREATHOUSE: Thirty nine eighty eight for that car.

C. GREATHOUSE: Huh?

J. GREATHOUSE: Thirty nine eighty eight.

C. GREATHOUSE: Thirty nine eighty eight.

J. GREATHOUSE: You wanna go where these . . .

C. GREATHOUSE: (Unintelligible).

J. GREATHOUSE: On the (unintelligible).

C. GREATHOUSE: On the Gold Wing yeah boy these are pretty ain't they. That's the kind I want to get one of these day (pause) Someday, who knows.

J. GREATHOUSE: Take a right here.

C. GREATHOUSE: I have to take a couple of Anacin freaking migraine headaches. I gotta stay away from the beer, man.

J. GREATHOUSE: (Unintelligible).

C. GREATHOUSE: I get too wild.

J. GREATHOUSE: He bought me a beer last night I said nope, I don't drink beer.

(Car engine sounds)

(Music in background)

C. GREATHOUSE: Where's my pepsi. Did you drink it?

J. GREATHOUSE: Not here.

C. GREATHOUSE: Oh you rascal.

(laughter)

C. GREATHOUSE: Right there.

(pause)

J. GREATHOUSE: You know where you're going don't you. You was drunk whenever I told you.

C. GREATHOUSE: Huh?

J. GREATHOUSE: You was drunk when I told you where the room was.

C. GREATHOUSE: Uhh Murphy's.

J. GREATHOUSE: Right, okay. What number.

C. GREATHOUSE: I don't know.

(laughter)

C. GREATHOUSE: What number I'm going to.

J. GREATHOUSE: 18.

C. GREATHOUSE: 18?

J. GREATHOUSE: Yeah.

C. GREATHOUSE: Okay.

J. GREATHOUSE: They got phones in the rooms you can call out there.

C. GREATHOUSE: Oh you can. Oh good . . . kitchenette?

J. GREATHOUSE: No, there's no room.

C. GREATHOUSE: Two double beds.

J. GREATHOUSE: Yeah.

C. GREATHOUSE: Okay. (pause) I'll have to go out there and take the kids. I'll have to take the kids out to eat . . . play with them for a little while. But I don't know if she had any money with her. I didn't ask her. (pause) Here's my key . . . no wait till I get up there. I got to go to the restaurant anyway. Get me another Pepsi. Since you bad ass drank it. I just can't trust you even with my Pepsi in the car.

J. GREATHOUSE: God damn you sat in there and chowing down man and drank . . .

C. GREATHOUSE: Chowed, give me the God damn soup that looked like puke.

J. GREATHOUSE: I'm sitting out in the car in the old hot sun, the old hot Pepsi, it was hot anyways you weren't drinking it.

C. GREATHOUSE: Oh shit, yeah that soup was shit, uh maybe it was just because I ddin't feel too good. Uh quarter till three. I'm here, you wanna come in, come in for ja minute. (background noises) Wish they would keep from leaving God damn garbage in my door. (Background noise) Get me a Pepsi Free out of the refrigerator will you Jerome? (Pause) (Goes to bathroom) ooh I was backed up to a gallon, I was backed up to a gallon, all that coffee, uh now I feel better even if I don't look no better. I had to do something. Then we really, I should take my vitamins with me because I don't think I'm gonna come home tonight, I don't think. (pause) Uh shit . . .

J. GREATHOUSE: (unintelligible)

C. GREATHOUSE: I got, oh that's right I got a carton in the car, okay, all right uh you ready, I'll drop you off over by your place here . . . get me Pepsi Free.

J. GREATHOUSE: (unintelligible) o'kay.

C. GREATHOUSE: O'kay huh?

J. GREATHOUSE: I should be able to walk to my house from here you know.

C. GREATHOUSE: Think you can.

(laughter)

C. GREATHOUSE: (unintelligible) all right you gonna get a hold of Bob and I'll get back to you in an hour or so.

J. GREATHOUSE: (unintelligible) I'll get a hold of him (unintelligible)

C. GREATHOUSE: Quarter to three (unintelligible) o'kay.

(Background noise)

J. GREATHOUSE: Catch you later.

C. GREATHOUSE: all right you leaving right now.
 J. GREATHOUSE: Yeah.
 C. GREATHOUSE: O'kay . . . hey I'm gonna call you in an hour.
 J. GREATHOUSE: Well (unintelligible) might be at Bob's call me on the beeper.
 C. GREATHOUSE: o'kay I'll call you on the beeper . . . if you get yeah, uh, I'm leaving now and I will meet you at 4:00.
 Four betwen four and four thirty, all right, bye.
 (Background Sounds)
 C. GREATHOUSE: (unintelligible)
 C. GREATHOUSE: Yeah I can be out there by that time.
 (unintelligible conversation)
 (Background Sounds)
 C. GREATHOUSE: My keys . . . o'kay I'm gonna I'm gonna go out and try to pick up some money too at 4:00, o'kay.
 J. GREATHOUSE: (unintelligible)
 C. GREATHOUSE: Yep . . . I've gotta stop and pick up some money before I go out to see her.
 J. GREATHOUSE: (unintelligible)
 Yeah, yeah.
 (unintelligible)
 C. GREATHOUSE: I'm gonna try to . . .
 J. GREATHOUSE: All right I'll I'll get over and try to see Bob.
 C. GREATHOUSE: O'kay . . . that's right.
 J. GREATHOUSE: What.
 C. GREATHOUSE: O'kay nothing.
 I'll get on Eddy.
 Hey if Eddy pages you . . .
 J. GREATHOUSE: Yeah . . .
 C. GREATHOUSE: Uh, tell him to expect a call from me, too, because I'm gonna have to page him tell him where to meet me . . . o'kay.

(Radio in Background)
 (pause)
 (Background Sounds)
 (Long pause)
 (Humming to himself)
 (Whistling Noise)
 C. GREATHOUSE: (unintelligible)
 C. GREATHOUSE: (Unintelligible) (unintelligible)
 God damn receipt (unintelligible).
 (sighs)
 (background sounds)
 C. GREATHOUSE: Uh there it is (unintelligible). Here it is. Break my damn ankle. Okay.
 (background sounds)
 C. GREATHOUSE: (Unintelligible) huh (unintelligible) go find 'em.
 (background sounds)
 (phone rings)
 C. GREATHOUSE: (Unintelligible) A little.
 (Unintelligible conversation)
 C. GREATHOUSE: Get up off that shit.
 (laughter)
 C. GREATHOUSE: Get up off of that. (unintelligible). One time.
 ROSELETTI: \$35 this room is gonna cost me. Holy (unintelligible). More than . . . 68. (Unintelligible). 68 . . . where do you see 68.
 C. GREATHOUSE: Where's (unintelligible) your pencil?
 (laughter)
 Tape ends.

GOVERNMENT EXHIBIT 3B

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/31/84

The attached is a transcript of a conversation between CLARENCE GREATHOUSE and ANGELO J. LONARDO on May 17, 1984.

C.G. 9-24-84

Investigation on 5/17/84 at Cleveland Ohio File # CV 245A-58-71G by SA ROBERT A. FIATAL/dml. Date dictated 5/23/84.

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CV 245A-58

5/17/84

OPERATOR: At the tone the time will be 8:11 and ten seconds.

(Dialing/ringing)

FEMALE: Good evening. Cleveland P.M.

CLARENCE GREATHOUSE: Yes uh Angelo please.

FEMALE: Can you hold on one second?

GREATHOUSE: Yes.

FEMALE: Thank you.

(Pause)

ANGELO LONARDO: Hello.

GREATHOUSE: Hello sir.

LONARDO: How are you doing?

GREATHOUSE: Fine. Are you on an open phone?

LONARDO: Not really.

GREATHOUSE: Okay.

LONARDO: Uh are you?

GREATHOUSE: Yeah.

LONARDO: Well...

GREATHOUSE: I'm free.

LONARDO: Hold on a minute and uh I'll give you a number, okay?

GREATHOUSE: Okay.

LONARDO: Hold on.

(Pause)

LONARDO: Hello.

GREATHOUSE: Yeah.

LONARDO: Yeah call me on 7877.

GREATHOUSE: Same first three digits?

LONARDO: Yeah.

GREATHOUSE: Okay, you got it.

LONARDO: Alright. Bye.

(End of call)

(Dialing/ringing)

LONARDO: Hello.

GREATHOUSE: Yeah.

LONARDO: Yeah.

GREATHOUSE: Okay.

LONARDO: Yeah.

GREATHOUSE: Alright, nothing, nothing matured.

LONARDO: Uh huh.

GREATHOUSE: So I couldn't come up with any kind of color.

LONARDO: Uh huh.

GREATHOUSE: Uh what I have planned is I planned a flight. I got it scheduled for Sunday morning.

LONARDO: Yeah.

GREATHOUSE: Arriving back here on Sunday evening and everything is set on that end.

LONARDO: Uh huh.

GREATHOUSE: But I need \$6 is what I need. I talked to a few people and I've got between now and Sunday to do it. But I'm goin' Sunday come hell or high water.

LONARDO: Uh huh.

GREATHOUSE: I don't care if where I gotta go but I need \$6 to take with me and be back Sunday night and then the uh balance is gonna follow up.

LONARDO: Uh huh.

GREATHOUSE: You think you can help me any with that?

LONARDO: I'll see what I can do.

GREATHOUSE: Okay I'll tell you what, I will need it by no later than Saturday, well you know.

LONARDO: I'll work on it.

GREATHOUSE: Yeah. Okay. Well \$6 is all I need. I got the rest.

LONARDO: Okay. There's uh . . .

GREATHOUSE: And everything else will be fronted to me.

LONARDO: Your wife didn't have any of those frijoles today then.

GREATHOUSE: No, she's outta town.

LONARDO: Oh alright.

GREATHOUSE: She went outta town on me. And then I stayed here to take care of this. No, no frijoles. I'll make sure that she makes some though when she says she's comin' down for dinner. Her and her father.

LONARDO: Right.

GREATHOUSE: But uh . . .

LONARDO: And evidently there's nothing else right?

GREATHOUSE: No, there is nothing else.

LONARDO: Alright.

GREATHOUSE: In fact I was looking around uh you know . . .

LONARDO: Yeah.

GREATHOUSE: Some frijoles for myself and couldn't even find any.

LONARDO: Alright, but uh I don't care, I'll go to Chi Chi's.

GREATHOUSE: Yeah. Well right now I've got, I've got the rest of it. That's all I need to conclude my uh . . .

LONARDO: Yeah.

GREATHOUSE: Well, actually to conclude everything. Okay?

LONARDO: Yeah.

GREATHOUSE: Alright, I'll wait for a call from ya. I won't be bothering you. I'll wait for a call from you.

LONARDO: I will (inaudible).

GREATHOUSE: Okay, tomorrow or Saturday either one.

LONARDO: Right.

GREATHOUSE: Okay, bye-bye.

(End of call)

GOVERNMENT EXHIBIT 5B

FEDERAL BUREAU OF INVESTIGATION

(1) Date of transcription 5/29/84

Attached is a transcript of a conversation between Clarence Greathouse and Angelo J. Lonardo on May 19, 1984.

C.G. 9-24-84

Investigation on 5/19/84 at Cleveland, Ohio File # CV 245A-58-67A by SA ROBERT A. FIATAL/rl. Date dictated 5/24/84.

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CV 245A-58
5/19/84

NAGRA BODY RECORDING

Clarence Greathouse
Angelo J. Lonardo
Hardrick L. Crawford
Robert F. Connole

CONNOLE Okay, this is Special Agent Robert Connole with Special Agent Hardrick Crawford and we're with Clarence Greathouse and ah, we have searched Mister Greathouse and he has no money on him. We've also searched his vehicle and there's no money in the vehicle. It's ah, three minutes to 11, Saturday, May 19th, 1984.

GREATHOUSE It's still a Timex, but it's right. Ah . . . Drick.

CONNOLE We'll follow you

CRAWFORD Okay C.

GREATHOUSE Yeah.

CONNOLE Uh, when you get there . . .
GREATHOUSE Hey, Drick open the gates.
CRAWFORD Got it.

CONNOLE You should give us about thirty seconds to get ahead of you and go in. Or you know, do what we're gonna do.

GREATHOUSE No, no.

CONNOLE We won't pull in the parking lot.

GREATHOUSE Okay.

CONNOLE I might, well, I might make a phone call. Do you think? Go to the P.M. and make a phone call if I see him come out?

GREATHOUSE No, no.

CONNOLE Okay.

GREATHOUSE Just watch me. I'll be back. Alright.

(CAR DOOR)

(NO CONVERSATION OVERHEARD WHILE GREATHOUSE DRIVES)

GREATHOUSE Hello young man.

LONARDO How ya doin'?

GREATHOUSE Fine.

(CAR DOOR)

LONARDO Whew, that was a fuckin' party.

GREATHOUSE Well . . .

LONARDO But that's all. I was a little (unintelligible) to see so many people.

GREATHOUSE Hell, they're just celebrating, they're celebratin' your birthday, that's all.

LONARDO But I had one guy come in and he . . .
GREATHOUSE Uh huh.

LONARDO . . . gave me a thousand.

GREATHOUSE Oh good.

LONARDO And ah . . .

GREATHOUSE Well, I only got one more person to see and I'm gone but the stuff's already on it's way.

LONARDO And that's it, you know, the . . .

GREATHOUSE Well . . .

LONARDO This here's all dollars.

GREATHOUSE Don't worry. It'll be returned startin' tomorrow. Well, I'm not gonna work till Monday.

LONARDO Uh huh.

GREATHOUSE Okay?

LONARDO Yeah.

GREATHOUSE Cause it still, I'm plannin' tomorrow, I'll be back tomorrow night at 8:46 and it'll already be here. I'll be, I'll be opened up Monday. I'm gonna set up two days in a motel. I only wanna go through one a week and that's it.

LONARDO Uh huh.

GREATHOUSE No more unless we get ah, you know, straight shot. You know?

LONARDO Okay.

GREATHOUSE But happy birthday.

LONARDO Alright, thank you.

GREATHOUSE Alright. I'll see ya later.

LONARDO I have to be goin'.

GREATHOUSE Have a nice evening.

LONARDO Alright.

GREATHOUSE Alright

LONARDO There was some people in there that, you know, their mouths may be doin' this if you walk in.

GREATHOUSE Oh, I don't wanna come in there.

LONARDO Alright.

GREATHOUSE Okay, I'll see you later.

(CAR DOOR)

(PAUSE)

GREATHOUSE (whistling) Got to sing . . . eh, di, di, do, do, do, do . . .

(PAUSE)

GREATHOUSE Shit. Come on . . . Bob? Where the hell you at? They're good when you can . . . Pretty good.

(PAUSE)

(CAR DOOR)

(GREATHOUSE ON TELEPHONE)

GREATHOUSE Hello honey, is ah, Drick or either one called? Huh? Okay. They might call. If they call tell 'em I'm on my way back to the house. And I left my pager sittin' there. Is it still sittin' there? Huh? Has it went off? Well listen for it to go off cause it might be one of them pagin'. I lost all four of 'em but I'm on my way back there. Put on a pot of coffee, er make me a cup of coffee. Alright. Bye. (HANGS UP)

(CAR DOOR)

(NO CONVERSATION OVERHEARD WHILE GREATHOUSE DRIVES)

(CAR DOOR)

(MOVEMENT)

(GREATHOUSE ON TELEPHONE)

GREATHOUSE Yes, could you raise ah, Crawford or Connole on the radio, sir? Eh, could you get ahold of Crawford or Connole? Pardon? Would you raise 'em on the radio? Tell 'em to call Bullman. Yes. Bye bye. (HANGS UP) Honey . . . I'm hungry.

PEGGY GREATHOUSE What?

GREATHOUSE I'm hungry. I'm also tired. Thank you for getting me some cigarettes (whispering inaudibly)

(CLOCK CHIMES)

(PAUSE)

(SIREN)

GREATHOUSE Make a couple of bowls of, heat up a couple, three bowls of that chili that you got. Is it still good?

(END SIDE ONE)

(BEGIN SIDE TWO OF COPY TAPE)

CONNOLLE How the hell'd you get home so fast?

GREATHOUSE That's pretty good when I lose all of ya.

CONNOLLE I know. Goddamn.

GREATHOUSE Where'd Drick go?

CONNOLLE He's tryin' to get you on the phone. He said eh, the guy just called us and said ah, you were ah, you wanted to call him, I mean, I mean, call the, call the office.

GREATHOUSE (laughs) Pretty damn good when I can move in and move out and lose all four of ya.

CONNOLLE You did. We thought you were inside.

GREATHOUSE Well where, where'd you think my car was? Inside too?

CONNOLLE No, I, see, we didn't go in there. Hey, Ron, get ahold of ah, Drick and tell him to come on over the house. That ah, our man's here. Okay? Thanks.
(HANGS UP)

GREATHOUSE Yeah.

CONNOLLE He give you the money?

GREATHOUSE In my coatpocket there. Specified how much he was givin' . . .

(RECORDER TURND OFF—END TAPE)

GOVERNMENT EXHIBIT 7B

FEDERAL BUREAU OF INVESTIGATION

Date of transcription June 1, 1984

The following is a transcript of a recorded telephone conversation between Clarence Greathouse & Angelo J. Lonardo which took place on May 21, 1984 at Cleveland, Ohio.

C.G. 9-24-84

Investigation on 5/21/84 at Cleveland Ohio. File # CV 245A-58 by SA ROBERT A. FIATAL/nkb. Date dictated 5/25/84.

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CV 245A-58

5/21/84

Clarence Greathouse & Angelo J. Lonardo.

(Dial Tone)

(Dialing sound)

FEMALE: At the tone the time will be 9:45 and 20 seconds.

(Dial Tone)

(Dialing Sound)

(phone rings)

LONARDO: Hello.

GREATHOUSE: Yeah how do you do sir . . .

LONARDO: O'kay.

GREATHOUSE: I'm chewing ten penny nails in two.

LONARDO: Huh?

GREATHOUSE: I says I'm chewing ten penny nails
in two...

LONARDO: How come?

GREATHOUSE: Uh I got a bad batch.

LONARDO: You did?

GREATHOUSE: Yep . . . and I sent . . . I shipped
it right straight back and I'm waiting on Atlanta tomor-
row morning.

LONARDO: Uhha.

GREATHOUSE: I'll be back here tomorrow night.

LONARDO: All right.

GREATHOUSE: I got . . . I'm so fucking . . . I
can't even say how pissed off I am.

LONARDO: Uhha.

GREATHOUSE: But they uh . . . they said my uncle
come up with a Gerome from Kentucky . . .

LONARDO: Yeah.

GREATHOUSE: He might . . . might took off down
to Atlanta and he'll be back in here tomorrow night . . .
short.

LONARDO: O'kay.

GREATHOUSE: O'kay.

LONARDO: Yeah.

GREATHOUSE: So give me a call tomorrow night
uh . . .

LONARDO: Oh I'll call you Wednesday . . .

GREATHOUSE: Yeah call me Wednesday.

LONARDO: All right.

GREATHOUSE: cuz I'm gonna be busy tomorrow
night . . .

LONARDO: O'kay.

GREATHOUSE: All right . . . bye . . . bye.

(hangs up phone)

GOVERNMENT EXHIBIT 9B

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/30/84

The following is a transcript of a recorded telephone
conversation between CLARENCE GREATHOUSE and
ANGELO J. LONARDO which took place on May 24,
1984 at Cleveland, Ohio.

Investigation on 5/24/84 at Cleveland, Ohio. File #
CV 245A-58 by SA ROBERT A. FIATAL/dml. Date
dictated 5/29/84.

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conclusions of the FBI. It is the property of the FBI and
is loaned to your agency; it and its contents are not to be
distributed outside your agency.

CV 245C-5

5/24/84

OPERATOR: At the tone the time will be 2:20
exactly.

(Beep)

CLARENCE GREATHOUSE: 243.

(Dialing/busy signal)

(Dialing/busy signal)

ANGELO LONARDO: Hello.

CLARENCE GREATHOUSE: How do you do sir?

LONARDO: Alright. Sorry I didn't call you back
last night but one of my people didn't show and I worked
till 3:30.

GREATHOUSE: Really?

LONARDO: Yep.

GREATHOUSE: You had to work the club yourself?

LONARDO: Yep.

GREATHOUSE: Son of a bitch.

LONARDO: Yeah so I know.

GREATHOUSE: What's the, what's the possibility of sitting down for a cup of coffee?

LONARDO: Uh I won't be able to do it until evening.

GREATHOUSE: Till this evening?

LONARDO: Yeah.

GREATHOUSE: That'd be fine.

LONARDO: Okay, I'll call you around 6:30 or so.

GREATHOUSE: That sounds real good.

LONARDO: Make it seven.

GREATHOUSE: Okay, we'll have coffee because I don't wanna say on the phone. I picked, I got myself a room . . .

LONARDO: Yeah.

GREATHOUSE: Settled in at another location. I didn't like that one.

LONARDO: Alright, I'll call you later.

GREATHOUSE: Okay. Call me about, at what time you said.

LONARDO: Well I'll call you like 6:30, 7:00.

GREATHOUSE: That sounds good.

LONARDO: Alright.

GREATHOUSE: I'll be waiting for ya, bye-bye.

(End of call)

GOVERNMENT EXHIBIT 10B

FEDERAL BUREAU OF INVESTIGATION

(1)

Date of transcription 6/4/84

Attached is a transcript of a conversation between Clarence Greathouse and Angelo J. Lonardo on May 24, 1984.

C.G. 9-24-84

Investigation on 5/24/84 at Cleveland Ohio. File # CV 245A-58 by SA ROBERT A. FIATAL/rl. Date dictated 5/29/84.

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CV 245A-58

5/24/84

TELCALL

Clarence Greathouse
Angelo J. Lonardo

(DIALING-RINGING)

RECORDING At the tone the time will be 7:49 and ten seconds.

(REDIALS-RINGING)

LONARDO Hello.

GREATHOUSE Hello sir.

LONARDO Yeah.

GREATHOUSE (laughs) Okay. Uh, can you meet me at the ah, Airport Sheraton?

LONARDO The airport?

GREATHOUSE I'm on a clear, clear phone. It's like a . . .

LONARDO Huh?

GREATHOUSE . . . goin' to the airport to get a airplane tickets?

LONARDO Yeah.

GREATHOUSE Just before you get to the airport, there's a Sheraton Hotel.

LONARDO Uh, alright, but it won't be till around ten o'clock.

GREATHOUSE Ten o'clock'll be fine.

LONARDO Alright. Uh . . .

GREATHOUSE Okay

LONARDO . . . I'll call when I'm on my way out there.

GREATHOUSE Sounds good.

LONARDO Okay?

GREATHOUSE Okay.

LONARDO Alright.

GREATHOUSE Cause I have another meeting at eight o'clock anyway.

LONARDO Alright, I'll call and then you can, you know, you can go to another phone and . . .

GREATHOUSE Okay.

LONARDO I'll be, when I call you, I'll be on a public phone.

GREATHOUSE No problem.

LONARDO Alright.

GREATHOUSE Bye.

(CALL TERMINATED)

GOVERNMENT EXHIBIT 11B

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/30/84

The following is a transcript of a conversation between CLARENCE GREATHOUSE and ANGELO J. LONARDO which took place on May 24, 1984 at Cleveland, Ohio.

Clarence Greathouse 10-1-84

Investigation on 5/24/84 at Cleveland, Ohio. File # CV 245A-112 by SA ROBERT A. FIATAL/dml. Date dictated 5/29/84

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CV 245A-58

5/24/84

(Unintelligible conversation)

CLARENCE GREATHOUSE: God damn (inaudible).

(Unintelligible conversation)

GREATHOUSE: Glass of ginger ale?

ANGELO LONARDO: Yeah. I tell you, my fucking stomach, well right after this Memorial holiday I call my doctor. My doctor tells me he doesn't want me drinking for two weeks.

GREATHOUSE: Uh huh.

LONARDO: (Unintelligible).

GREATHOUSE: Well I haven't been drinking (inaudible).

LONARDO: That's good enough.
 GREATHOUSE: (Inaudible). Check it out. We'll see, don't want it too granulated.
 LONARDO: Uh huh.
 GREATHOUSE: My old lady's been bugging me.
 LONARDO: It won't kill her to (unintelligible).
 GREATHOUSE: (Inaudible).
 LONARDO: Here, separate it.
 (Pause)
 GREATHOUSE: That's right. You're not too good at separating.
 LONARDO: No, I make 'em too thick.
 GREATHOUSE: (Unintelligible) oh shit. Damn. See what you think.
 LONARDO: Hmm hm.
 (Beeping)
 LONARDO: I don't (unintelligible). We'll do this other one (unintelligible) and take off if you have to make a call.
 GREATHOUSE: Huh?
 LONARDO: You know because I'll be able to spend more time with ya tomorrow.
 GREATHOUSE: Well that's a fucking girls.
 LONARDO: Huh?
 GREATHOUSE: Fucking girl. I can't do it too fast. Just can't do it too fast.
 LONARDO: Well . . .
 GREATHOUSE: Did you talk to some of 'em?
 LONARDO: Huh?
 GREATHOUSE: Talk to some of 'em? Some of the people?
 LONARDO: Yeah. See I had talked to 'em about the other, the other figure.
 GREATHOUSE: Yeah.
 LONARDO: So then when I saw the thing I says shit, can't go back to these you know. I says when I see you I would explain to you, I didn't wanna say that to Peggy on the phone.

GREATHOUSE: No, no don't say nothing to nobody.
 LONARDO: I never do.
 GREATHOUSE: Yeah.
 LONARDO: And I didn't wanna talk to you on the phone either.
 GREATHOUSE: Yeah. Don't say nothing on the phone.
 LONARDO: Cause I told 'em that whenever I quote a future for the Christmas trees it stays that way.
 GREATHOUSE: Yeah.
 LONARDO: But you know you must pay now so that the price stays.
 GREATHOUSE: (Inaudible).
 LONARDO: Huh?
 GREATHOUSE: We're talking 31. We're talking 31 for a whole.
 LONARDO: Yeah.
 GREATHOUSE: If we gotta go quarter.
 LONARDO: Yeah I understand.
 GREATHOUSE: Huh?
 LONARDO: Now I understand.
 GREATHOUSE: Okay. Well I didn't know what you was saying.
 (Pause)
 GREATHOUSE: So what's it, what's it look like for tomorrow?
 LONARDO: I'll try to get a hold of some people. I don't know. I really don't know.
 GREATHOUSE: Alright then I'm gonna go ahead and start doing my move.
 LONARDO: Do whatever you have to till I, you know, we work this thing. Cause all I told 'em was that it was off for right now rather than go back and say it's, you know, then they say fuck this guy. So I just told 'em well every-thing's off right now. So I have to back . . .
 GREATHOUSE: Okay. (Unintelligible). What about Ronnie?
 LONARDO: Huh?

GREATHOUSE: (Unintelligible). What about Ronnie?

LONARDO: I didn't contact him. But uh I will contact him.

GREATHOUSE: Okay cause I don't wanna be sitting on this shit.

LONARDO: You can't.

GREATHOUSE: I wanna get outta here.

LONARDO: Right.

GREATHOUSE: I can't sit here (unintelligible) today.

LONARDO: Alright, I'll call you tomorrow.

GREATHOUSE: Okay.

LONARDO: And then uh I'll come have a cup of coffee with you somewhere.

GREATHOUSE: Okay.

LONARDO: Okay? I mean other than here or whatever.

GREATHOUSE: Okay.

LONARDO: Cause you got your beeper anyway.

GREATHOUSE: Yeah.

LONARDO: Alright? Matter of fact I'll try to contact some people tonight.

GREATHOUSE: Okay.

LONARDO: I'll see ya.

GREATHOUSE: Want to take this and show them?

LONARDO: Yeah.

GREATHOUSE: Okay sir.

LONARDO: Alright, you'll hear from me.

GREATHOUSE: I'll be waiting to hear from you tomorrow. Give my girlfriend a call and uh I'll hear from you tomorrow, we'll roll from there.

LONARDO: Alright.

GREATHOUSE: That's all we can do.

LONARDO: And then uh if you can get that dollar I'd appreciate it.

GREATHOUSE: Alright.

LONARDO: Otherwise I wouldn't, I swear to God I wouldn't bother you for it.

GREATHOUSE: Well then I'll just go ahead and start moving.

LONARDO: Okay.

GREATHOUSE: Get a few bucks in.

LONARDO: Do whatever you have to.

GREATHOUSE: Well you shoot for tomorrow now.

LONARDO: See I gotta recontact these people.

GREATHOUSE: Okay, now you do understand though?

LONARDO: I understand that now. But see uh (unintelligible) I called 'em back I said look, you know how these people (unintelligible) everything is called off. Rather than go this, and then they say what the fuck this guy setting us up or what?

GREATHOUSE: But I couldn't say nothing on the phone to you.

LONARDO: I know. I ain't goin' to.

(Unintelligible conversation)

GREATHOUSE: Give 'em the figures and give me an answer tomorrow.

LONARDO: Alright.

GREATHOUSE: Okay.

(End of tape)

—

GOVERNMENT EXHIBIT 12B

FEDERAL BUREAU OF INVESTIGATION

(1) Date of transcription 6/6/84

The following is a transcript of a recorded telephone conversation between Clarence Greathouse and Angelo J. Lonardo which took place on May 25, 1984 at Cleveland, Ohio.

C.G. 9-24-84

Investigation on 5/25/84 at Cleveland, Ohio File CV 245A-58-85A by SA Robert A. Fiatal/nkb Date dictated 5/31/84

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CV 245A-58

5/25/84

Clarence Greathouse & Angelo J. Lonardo

(Dial Tone)

(Dialing Sound)

GREATHOUSE: These boys ain't giving me a five minute break today . . . I need complete quiet . . .

(Phone Rings)

OPERATOR: At the tone the time will be 5:36 and 30 seconds.

(Dial Tone)

(Dialing Sound)

(pause)

(Dial Tone)

(Dialing Sound)

(Phone rings)

LONARDO: Hello

GREATHOUSE: Yeah boss.

LONARDO: How you doing?

GREATHOUSE: I'm fine.

LONARDO: I got a call from Peggy . . . do you know what that's all about.

GREATHOUSE: Uh she was just wondering . . . I was just wondering if you were gonna get in touch with me this evening.

LONARDO: Oh yeah.

GREATHOUSE: O'kay.

LONARDO: As a matter of fact I have uh a gentleman friend of mine here now.

GREATHOUSE: O'kay.

LONARDO: And he had some questions to ask you about the trees.

GREATHOUSE: O'kay.

(Unintelligible)

LONARDO: (unintelligible)

GREATHOUSE: No I'm not on the pay phone you want me to go to a pay phone and call you.

LONARDO: Absolutely.

GREATHOUSE: O'kay I'm on my way.

LONARDO: All right.

GREATHOUSE: Bye.

(hangs up phone)

GOVERNMENT EXHIBIT 13B

FEDERAL BUREAU OF INVESTIGATION

(1) Date of transcription 6/6/84

The following is a transcript of a recorded telephone conversation between Clarence Greathouse and Angelo J. Lonardo which took place on May 25, 1984 at Cleveland, Ohio.

C.G. 9-24-84

Investigation on 5/25/84 at Cleveland, Ohio File CV 245A-58-85A by SA Robert A. Fiatal/nkb. Date dictated 5/31/84.

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CV 245A-58

5/25/84

Clarence Greathouse & Angelo J. Lonardo

(Dial Tone)

(Background Noises)

GREATHOUSE: (unintelligible) over my ear. Am I on?

DORTON: Uhha.

(Dialing Sound)

(Background Noises)

OPERATOR: If you'd like to make a call please hang up and try again.

(Background Noises)

(Dial Tone)

(Dialing Sound)

(Phone Rings)

LONARDO: Hello

GREATHOUSE: Hello Boss.

LONARDO: Yeah

What's Happening.

GREATHOUSE: It ain't too much . . . we just waiting for you.

LONARDO: All right.

GREATHOUSE: I'm at 362-9350 if you want to call back.

LONARDO: Uh, no no it's o'kay.

GREATHOUSE: O'kay.

LONARDO: Uh o'kay whose gonna bring those trees?

GREATHOUSE: Uhm myself possibly

What would you like?

LONARDO: Well . . . I don't know . . . you think that's a good idea or . . .

GREATHOUSE: Well have my uncle up here to help . . . it helped uh Jerome move my furniture back up . . . you know when my girlfriend and I moved to Kentucky.

LONARDO: Yeah but (unintelligible)

GREATHOUSE: The one that works in the coal mine.

LONARDO: I don't know him.

GREATHOUSE: Yeah I know but he's driven . . . he'll be driving my black bomb.

(pause)

LONARDO: Well . . .

GREATHOUSE: If that's what you want.

LONARDO: No what I thought would be that hmmm you know you'd drive your car up say uh and park behind the hill.

GREATHOUSE: Behind the where?

LONARDO: The Hilton.

GREATHOUSE: O'kay that's on Rockside.
 LONARDO: Yeah . . . by you know the breakfast place.
 GREATHOUSE: O'kay.
 LONARDO: And uh then I'll be in the lobby or something . . .
 GREATHOUSE: Yeah.
 LONARDO: You can bring the key (phonetic) in and I'll . . .
 GREATHOUSE: O'kay.
 LONARDO: My friend will be out in his car and I'll just go over and and you know . . .
 GREATHOUSE: O'kay that's fine.
 LONARDO: You know . . . whatever.
 GREATHOUSE: No that sounds real . . . in fact that's fantastic. That sound real good . . . what time?
 LONARDO: Huh.
 GREATHOUSE: What time?
 LONARDO: As soon as possible.
 GREATHOUSE: O'kay let's say oh . . . it would take me till at least 8:30 to get there.
 LONARDO: 8:30?
 GREATHOUSE: Yeah.
 (pause)
 LONARDO: All right.
 GREATHOUSE: O'kay 8:30 sir.
 LONARDO: Yeah.
 GREATHOUSE: Yeah, bye, bye.
 (Hangs up Phone)

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF OHIO
 EASTERN DIVISION

Case No. CR 84-105

JUDGE GEORGE W. WHITE

UNITED STATES OF AMERICA, PLAINTIFF

v/s.

WILLIAM BOURJAILY, DEFENDANT

MOTION FOR JUDGMENT OF ACQUITTAL OR
 A NEW TRIAL

The Defendant, through counsel, hereby moves the Court under rules 29(c) and 33, *Federal Rules of Criminal Procedure*, for an order granting him a judgment of acquittal or a new trial. In support thereof the defendant avers as follows:

1. The Court erred in denying the defendants Motion to Suppress and for the return of illegally seized property.
2. That there is insufficient evidence to support a finding of guilty beyond a reasonable doubt as to the guilty verdict returned herein on either counts one or two.
3. The court erred in finding as a predicate to the admission of considerable prejudicial evidence that a conspiracy existed as between the defendant and his co-defendant in the trial.

4. The defendant was prejudiced, and otherwise victimized, by the admission of considerable testimony that violated both the hearsay rule and his right of confrontation.
 5. That even assuming at some point a conspiracy was shown to exist between the defendants on trial, this defendant was nonetheless prejudiced by virtue of the admission of evidence that did not qualify under Rule 802 (d) (2) (E), *Federal Rules of Evidence*.
- * * * *

Denied. IT IS SO ORDERED.

GEORGE W. WHITE

12-19-84

UNITED STATES DISTRICT COURT FOR
N. DIST. OF OHIO, EAST. DIVN.

Docket No. CR84-105

UNITED STATES OF AMERICA

vs.

WILLIAM BOURJAILY

JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date 1-4-85.

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL James R. Willis

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a verdict of

NOT GUILTY, Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of conspiracy to distribute and possess cocaine, possession of cocaine with intent to distribute (aiding and abetting)

in violation of Title 21 Sections 846 and 841(a)(1) and Title 18, Section 2, U.S.C.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on count 1 and FIFTEEN YEARS on count 2 to run concurrently.

IT IS FURTHER ORDERED that the sentence imposed on count 2 is to be followed by a THREE (3) YEAR period of special parole pursuant to Title 21, Section 841 (b)(1)(A), U.S.C.

By: /s/ James F. McCann
Deputy Clerk

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

/s/ George W. White
GEORGE W. WHITE
U.S. District Judge
Date 1/4/85

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. CR 84-105

UNITED STATES OF AMERICA, PLAINTIFF

vs.

WILLIAM BOURJAILY, DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that William Bourjaily, the above-named defendant, hereby appeals to the United States Court of Appeals for the Sixth Circuit, from the verdict rendered, the order made denying his Motion for a New Trial, and the sentence imposed herein on January 4, 1985.

/s/ James R. Willis
JAMES R. WILLIS

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 85-3058

UNITED STATES OF AMERICA, PLAINTIFF/APPELLEE

v.

WILLIAM JOHN BOURJAILY, DEFENDANT-APPELLANT

On Appeal from the United States District Court
for the Northern District of Ohio

Decided and Filed January 15, 1986

Before: LIVELY, Chief Circuit Judge; MARTIN and JONES, Circuit Judges.

BOYCE F. MARTIN, JR., Circuit Judge. William Bourjaily appeals his convictions for conspiracy to distribute and possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1),¹ 21 U.S.C. § 846² and

¹ 21 U.S.C. § 841(a)(1) provides the following:

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—
(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.

Cocaine is a controlled substance.

² 21 U.S.C. § 846 provides the following:

Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

18 U.S.C. § 2.³ Bourjaily claims that statements of his codefendants, Angelo Lonardo, should not have been admitted as statements of a co-conspirator as provided by Rule 801(4)(2)(E) of the Federal Rules of Evidence. Because Lonardo exercised his right not to testify at trial, Bourjaily claims that even if Lonardo's statements were admissible under Rule 801(d)(2)(E), allowing the statements into evidence violated his sixth amendment right to confrontation. Bourjaily also claims that the evidence was insufficient to support findings of conspiracy and possession.

The majority of the evidence in this case was presented by testimony of FBI agents; testimony of an FBI informant, Clarence Greathouse; and several recordings of cryptic conversations between Greathouse and the defendant, Angelo Lonardo. Greathouse testified that he arranged for a transfer of one kilogram of cocaine to Angelo Lonardo to be sold by "people" Lonardo was to select. On May 12, 1984, Greathouse, equipped with a body recorder, met with Lonardo to discuss the possibility of a sale. In this taped conversation, Lonardo indicated that he had talked to "the people" and they were interested. He then stated that the deal would be handled as had been done in the past. Later in the conversation, Lonardo said that he would "try to set some people up." He stated that his contacts did not know that Greathouse was his supplier and Lonardo wanted to keep it that way. Greathouse demanded one-half of the purchase price before delivery and requested that each of Lonardo's buyers purchase at least one-fourth of a kilogram. Lonardo agreed.

³ 18 U.S.C. § 2 states the following:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Greathouse testified that on May 17, 1984, he asked Lonardo for money and Lonardo responded that he would get in touch with "some people" and recontact Greathouse. He called Greathouse on May 19 to arrange for delivery of the money and the delivery occurred. Several other conversations occurred in the next few days as the deal was being finalized. All of these conversations were recorded. On May 24, Lonardo met Greathouse at the Sheraton Hopkins Hotel outside of Cleveland. Greathouse told Lonardo that the cocaine had arrived. In a taped conversation, Lonardo said that he would try to contact some people but that he had told them the deal was off because of a purchase price misunderstanding.

On May 25, Lonardo, in a taped telephone conversation, told Greathouse he had a "gentleman friend" present who "had some questions" to ask Greathouse. Lonardo indicated that he wanted Greathouse to call back immediately. The second call was not recorded but FBI agent Dorton listened to both sides of the conversation. Greathouse testified that he discussed how the gentleman was to pay, as well as the quality, the purity, the formation and the clarity of the cocaine. Agent Dorton confirmed that these topics were discussed. Later that day, in a taped conversation, Lonardo told Greathouse to park his car behind the Hilton Hotel and that Lonardo would be waiting for him in the lobby. Lonardo stated, "My friend will be out in his car and I'll just go over and you know."

FBI agents Fiatal and Dorton placed four quarter-kilogram bags of cocaine in a Sheraton laundry bag in Greathouse's car. Greathouse parked at the Hilton, entered and stood next to Lonardo. FBI agents Fiatal and Dorton testified that William Bourjaily was in the parking lot in a white car which was facing away from the hotel. Other FBI agents in a surveillance van stationed in the parking lot prior to Greathouse's arrival had observed Bourjaily drive around the parking lot, stop in different areas and examine the vehicles parked there.

The agents stated that Bourjaily's car was at the end of the parking lot farthest from the hotel entrance when Greathouse arrived.

Greathouse arrived, entered the Hilton and gave Lonardo the keys to his car. Lonardo took the keys, walked to Greathouse's car, circled the car and walked to Bourjaily's car. Lonardo then walked back to Greathouse's car, unlocked the door, reached under the seat and removed the cocaine. As Lonardo neared Greathouse's car, Bourjaily turned his car around in the parking lot and moved to a point near Greathouse's car. Lonardo took the cocaine from the car and walked to Bourjaily's car. At least one FBI agent saw Lonardo hand the package of cocaine to Bourjaily and saw Bourjaily accept it. The FBI agents then arrested Bourjaily and Lonardo and recovered the cocaine from Bourjaily's car. They found, under Bourjaily's passenger seat, a leather bag containing \$19,000 in cash. A receipt found in the bag was made out to Bill Bourjaily. They also found \$2,000 in the glove compartment.

We believe the trial judge was correct in allowing Lonardo's statements to be admitted as statements of a co-conspirator as provided by Rule 801(d)(2)(E) of the Federal Rules of Evidence, which states:

(d) **Statements which are not hearsay.** A statement is not hearsay if—
...

(2) **Admission by party-opponent.** The statement is offered against a party and is . . .

(E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

We have held that in order to have a co-conspirator's testimony admitted, it must be shown by a preponderance that a conspiracy existed, that the defendant against whom the hearsay is offered was a member of the con-

spiracy, and that the statement in question was made in furtherance of the conspiracy. *United States v. Vinson*, 606 F.2d 149, 152 (6th Cir. 1979), cert. denied, 444 U.S. 1074 (1980); *United States v. Enright*, 579 F.2d 980, 986 (6th Cir. 1978). This determination need not be decided at the time the questionable evidence is offered. Rather, as the trial court here did, the court may wait until the United States' case is complete before making findings and rulings on its admissibility. *Vinson*, 606 F.2d at 153. The statements at issue may be considered by the court in determining whether the *Enright* requirements are satisfied.⁴ *Id.* Here the court specifically found that the *Enright* requirements had been satisfied. We find no procedural error.

Substantively, the trial judge did not err in finding that the government had proved by a preponderance of the evidence that the *Enright* requirements were satisfied. Lonardo's conversations with Greathouse establish that Greathouse was to supply the cocaine and Lonardo was to line up buyer-distributors and to obtain partial payment from them. The conspiracy and Bourjaily's membership in it was preponderantly proved by these conversations, by Greathouse's telephone discussion with Lonardo's "friend" about the quality of the cocaine, and Lonardo and Bourjaily's actions in the Hilton parking lot. After talking with Lonardo, Bourjaily pulled his car nearer Greathouse's car so that the cocaine could be transferred by Lonardo easily. Bourjaily then accepted the cocaine from Lonardo. Lonardo's statements were made in furtherance of the conspiracy because they were recorded from conversations between Lonardo and Greathouse in which they planned, negotiated, and organized the transaction.

⁴ The Supreme Court denied certiorari on this issue in *Means v. United States*, — U.S. —, 105 S. Ct. 541 (1984). See also *United States v. Martorano*, 561 F.2d 406, 408 (1st Cir. 1977), cert. denied, 435 U.S. 922 (1978).

Admission of Lonardo's statements does not violate Bourjaily's sixth amendment right of confrontation, though Bourjaily could not confront or otherwise cross-examine Lonardo because Lonardo exercised his right not to testify. In *Ohio v. Roberts*, 448 U.S. 56 (1980), the Supreme Court held that the defendant's right to confrontation is protected if the hearsay statement sought to be used against the defendant has sufficient indicia of reliability and if the declarant is unavailable. *Id.* at 65-66. The *Roberts* court stated that "reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception." *Id.* at 66. Rule 801(d)(2)(E) provides that statements of co-conspirators are not hearsay for purposes of the rules. However, these statements are out-of-court assertions offered for their truth "and thus resting for . . . [their] value upon the credibility of the out-of-court asserter." C. McCormick, *Handbook of the Law of Evidence*, § 246 at 584 (1972). These statements are thus traditionally considered hearsay and squarely covered by the *Roberts* requirements. See *Lilly, Notes on the Confrontation Clause and Ohio v. Roberts*, 36 U. Fla. L. Rev. 207, 229 (1984).

The circuits are split on the analysis to be followed in dealing with co-conspirator's statements.⁵ Several circuits have adopted an approach in which co-conspirator statements admitted under Rule 801(d)(2)(E) are analyzed on a case-by-case basis for reliability and availability. See *United States v. DeLuna*, 763 F.2d 897, 909-10 (8th Cir. 1985); *United States v. Ammar*, 714 F.2d 238, 254-57 (3d Cir.), cert. denied, 464 U.S. 936 (1983); *United States v. Perez*, 658 F.2d 654, 660 & n.5 (9th Cir. 1981); *United States v. Wright*, 588 F.2d 31, 37-38 (2d Cir. 1978), cert. denied, 440 U.S. 917 (1979).

⁵ The Supreme Court denied certiorari in a case presenting this precise issue. See *Sanson v. United States*, — U.S. —, 104 S. Ct. 3559 (1984).

We have held that evidence admitted as a co-conspirator's statement under Rule 801(d)(2)(E) automatically satisfies the sixth amendment requirements. *Boone v. Marshall*, 760 F.2d 117, 119 (6th Cir. 1985); *United States v. McLernon*, 746 F.2d 1098, 1106 (6th Cir. 1984); *United States v. Marks*, 585 F.2d 164, 170 n.5 (6th Cir. 1978); *United States v. McManus*, 560 F.2d 747 (6th Cir. 1977), cert. denied, 434 U.S. 1047 (1978); *Campbell v. United States*, 415 F.2d 356 (6th Cir. 1969). Accord *United States v. Lurz*, 666 F.2d 69, 80-81 (4th Cir. 1981), cert. denied, 455 U.S. 1005 (1982); *United States v. Papia*, 560 F.2d 827, 836 & n.3 (7th Cir. 1977); *Ottomano v. United States*, 468 F.2d 269, 273 (1st Cir. 1972), cert. denied, 409 U.S. 1128 (1973). However, none of these cases discuss the implications of the two-pronged test of *Roberts* on our analysis.

In *Fusion v. Jago*, 773 F.2d 55 (6th Cir. 1985), another approach was used which applied *Roberts*. In *Fusion* a separate finding of unavailability was made and the panel held that the 801(d)(2)(E) provision represented a "well established" hearsay exception. *Fusion*, 773 F.2d at 59. Though the *Fusion* Court ultimately found that the statement in question did not fit within the exception, we think the bifurcated analysis is proper and more in accord with the *Roberts* requirements. As implied in *Fusion*, the reliability prong of the *Roberts* analysis is supplied by satisfaction of Rule 801(d)(2)(E), a well-established hearsay exception. Availability must be separately proved. Accord *United States v. Peacock*, 654 F.2d 339, 349-50 (5th Cir. 1981), cert. denied, 464 U.S. 965 (1983).

Because we find that Lonardo's statements were properly admitted under Rule 801(d)(2)(E), reliability is proved. Lonardo, the declarant and Bourjaily's codefendant, was unavailable because he refused to testify. In *Mayes v. Sowders*, 621 F.2d 850, 855 (6th Cir.), cert. denied, 449 U.S. 922 (1980), we stated:

A witness is not available for full and effective cross-examination when he or she refuses to testify. *Douglas v. Alabama*, 380 U.S. 415, 85 S. Ct. 1074, 13 L.Ed.2d 934 (1965); *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L.Ed.2d 76 (1968); *Nelson v. O'Neil*, 402 U.S. 622, 91 S. Ct. 1723, 29 L.Ed.2d 222 (1971). This is equally true whether the refusal to testify is predicated on privilege or is punishable as contempt, so long as the refusal to testify is not procured by the defendant. *Douglas v. Alabama*, *supra*, 380 U.S. at 420, 85 S. Ct. at 1077; *Motes v. United States*, 178 U.S. 458, 471, 20 S. Ct. 993, 998, 44 L.Ed. 1150 (1900); *United States v. Mayes*, 512 F.2d 637, 650-52 (6th Cir.), cert. denied, 422 U.S. 108, 95 S. Ct. 2629, 45 L.Ed.2d 670 (1975).

621 F.2d at 856. See *Rice v. Marshall*, 709 F.2d 1100, 1102 (6th Cir. 1983), cert. denied, 465 U.S. 1034 (1984). Clearly, Lonardo's refusal to testify made him unavailable.

Bourjaily's final claim is that the evidence adduced at trial was insufficient to support a finding by the jury that conspiracy to distribute cocaine and possession of cocaine were proved beyond a reasonable doubt. The standard now generally applied in determining the sufficiency of the evidence at trial is "whether after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, reh'g denied, 444 U.S. 890 (1979); *United States v. Gallo*, 763 F.2d 1504, 1508 (6th Cir. 1985). The essential elements of conspiracy are that the conspiracy was willfully formed, that the defendant willfully became a member of the conspiracy, and that one of the conspirators committed at least one overt act in furtherance of the conspiracy. *United States v. Thompson*, 533 F.2d 1006, 1009 (6th Cir.), cert. denied, 429 U.S. 939 (1976). For conviction, Bour-

jaily must have been shown to have agreed to participate in what he knew to be a joint venture to achieve a common goal. *United States v. Warner*, 690 F.2d 545, 549 (6th Cir. 1982); *United States v. Martino*, 664 F.2d 860, 876 (2d Cir. 1981), cert. denied, 458 U.S. 1110 (1982). However, actual agreement need not be proved. Drug distribution conspiracies are often "chain" conspiracies such that agreement can be inferred from the interdependence of the enterprise. *Warner*, 690 F.2d at 549; *United States v. Sutherland*, 656 F.2d 1181, 1195-96 (5th Cir. 1981), cert. denied, 455 U.S. 949 (1982). One can assume that participants understand that they are participating in a joint enterprise because success is dependent on the success of those from whom they buy and to whom they sell. *Warner*, 690 F.2d at 549; *Martino*, 664 F.2d at 876. Circumstantial evidence is sufficient. *Thompson*, 533 F.2d at 1009.

Viewing the evidence before us in the light most favorable to the United States, *Glasser v. United States*, 315 U.S. 60 (1942), we hold that there was sufficient evidence from which the rational jury member could have found beyond a reasonable doubt that Bourjaily was a willful member of a conspiracy to distribute cocaine and that the accompanying overt acts were committed by the conspirators. The evidence established that Bourjaily took the cocaine from Lonardo in the Hilton parking lot. The additional evidence of Lonardo's actions in lining up buyers, and Lonardo's conversations with Greathouse is supportive of the conspiracy finding. Lonardo called Greathouse so that his "friend" could discuss the deal with him. Greathouse spoke with this "friend" about the quality of the cocaine. Lonardo later said "his friend" would be in the Hilton parking lot. Even if the evidence of Bourjaily taking the cocaine from Lonardo is only evidence of a sale, there is additional evidence from which knowledge of the conspiracy may be inferred. *United States v. Grunsfeld*, 558 F.2d 1231, 1235 (6th Cir. 1977), cert. denied, 434 U.S. 872 (1978). *United*

States v. Mayes, 512 F.2d 637, 647 (6th Cir.), cert. denied, 422 U.S. 1008 (1975). Further, one kilogram of cocaine was involved. A large volume of narcotics creates an inference of a conspiracy. *Grunsfeld*, 558 F.2d at 1235; *United States v. Aiken*, 373 F.2d 294, 300 (2d Cir.), cert. denied, 389 U.S. 833 (1967).

Likewise, a rational trier of fact could find that possession, a necessary finding for a violation of 21 U.S.C. 841(a)(1), was proved beyond a reasonable doubt. An FBI agent testified that he saw Lonardo give Bourjaily the cocaine and that Bourjaily accepted it. Immediately thereafter, Bourjaily was arrested and the cocaine was found in the passenger portion of his car. Bourjaily's contention that he did not know that the substance was cocaine is meritless in light of the money found in his car, Lonardo's statements, and the phone call Greathouse had with Lonardo's "friend."

We affirm.

SUPREME COURT OF THE UNITED STATES

No. 85-6725

WILLIAM JOHN BOURJAILY, PETITIONER

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted limited to the following questions: 1. Whether, in order to admit an alleged co-conspirator's declarations against a defendant under Federal Rule of Evidence 801(d)(2)(E), the court must determine by independent evidence a) that a conspiracy existed, and b) that the declarant and the defendant were members of this conspiracy. 2. Assuming that the court must make these determinations, upon what quantum of independent proof must they be based? 3. Whether, as a requirement for the admission of a co-conspirator's statement against a defendant, the court must assess the circumstances of the case to determine whether the statement carries with it sufficient indicia of reliability.

October 14, 1986